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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MYOHO WINSTON,
Plaintiff,
v.
I. MARTINEZ,
Defendant.

CASE NO. 1:17-cv-00774-MJS (PC)
ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND
(ECF No. 1)
THIRTY (30) DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983 on June 6, 2017. Plaintiff has consented to Magistrate Judge jurisdiction in this case. (ECF No. 9). No other parties have appeared.

I. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any

1 time if the court determines that . . . the action or appeal . . . fails to state a claim upon
2 which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 **II. Pleading Standard**

4 A complaint must contain “a short and plain statement of the claim showing that
5 the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
6 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported
7 by mere conclusory statements, do not suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678
8 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)), and courts “are
9 not required to indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d
10 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual
11 allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678.

12 Under section 1983, Plaintiff must demonstrate that each defendant personally
13 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
14 2002). This requires the presentation of factual allegations sufficient to state a plausible
15 claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,
16 969 (9th Cir. 2009). Prisoners proceeding pro se in civil rights actions are entitled to
17 have their pleadings liberally construed and to have any doubt resolved in their favor,
18 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted), but nevertheless,
19 the mere possibility of misconduct falls short of meeting the plausibility standard, Iqbal,
20 556 U.S. at 678; Moss, 572 F.3d at 969.

21 **III. Plaintiff’s Allegations**

22 Plaintiff is currently incarcerated at the California Correctional Institution in
23 Tehachapi, California. However he complains of acts that occurred at the California
24 State Prison, Corcoran in Corcoran, California (“CSP—COR”). Plaintiff brings this action
25 against Defendant I. Martinez, a correctional officer at CSP—COR.

26 Plaintiff’s allegations can be summarized essentially as follows: On May 18, 2016,
27 he filed a grievance about a television having been confiscated from his cell on May 3,
28 2016. During a July 11, 2016, hearing on the grievance Defendant retaliated against

1 Plaintiff by filing a false Rules Violation Report (“RVR”) accusing Plaintiff of having stolen
2 the television from another inmate. Defendant did so to prevent Plaintiff from filing a
3 second grievance. Plaintiff’s fear of Defendant kept him from filing a second grievance.

4 Plaintiff alleges this retaliation violated his rights under the First Amendment.

5 **IV. Discussion**

6 Section 1983 provides for a cause of action against prison officials who retaliate
7 against inmates for exercising their constitutionally protected rights. Pratt v. Rowland, 65
8 F.3d 802, 806 n. 4 (9th Cir. 1995) (“[R]etaliatory actions by prison officials are cognizable
9 under § 1983.”) Within the prison context, a viable claim of retaliation entails five basic
10 elements: “(1) An assertion that a state actor took some adverse action against an inmate
11 (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the
12 inmate’s exercise of his constitutional rights, and (5) the action did not reasonably
13 advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th
14 Cir. 2005); accord Watison v. Carter, 668 F.3d at 1114-15; Silva v. Di Vittorio, 658 F.3d
15 1090, 1104 (9th Cir. 2011); Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009).

16 The second element focuses on causation and motive. See Brodheim, 584 F.3d
17 at 1271. A plaintiff must show that his protected conduct was a “‘substantial’ or
18 ‘motivating’ factor behind the defendant’s conduct.” Id. (quoting Sorrano’s Gasco, Inc. v.
19 Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989). Although it can be difficult to establish the
20 motive or intent of the defendant, a plaintiff may rely on circumstantial evidence. Bruce v.
21 Ylst, 351 F.3d 1283, 1289 (9th Cir. 2003) (finding that a prisoner established a triable
22 issue of fact regarding prison officials’ retaliatory motives by raising issues of suspect
23 timing, evidence, and statements); Hines v. Gomez, 108 F.3d 265, 267-68 (9th Cir.
24 1997); Pratt, 65 F.3d at 808 (“timing can properly be considered as circumstantial
25 evidence of retaliatory intent”).

26 In terms of the third prerequisite, filing a complaint or grievance is constitutionally
27 protected. Valandingham v. Bojorquez, 866 F.2d 1135, 1138 (9th Cir. 1989).

28 With respect to the fourth prong, the correct inquiry is to determine whether an

1 official's acts "could chill a person of ordinary firmness from continuing to engage in the
2 protected activity[]." Pinard v. Clatskanie School Dist. 6J, 467 F.3d 755, 770 (9th Cir.
3 2006); see also White v. Lee, 227 F.3d 1214, 1228 (9th Cir. 2000).

4 With respect to the fifth prong, a prisoner must affirmatively allege that "the prison
5 authorities' retaliatory action did not advance legitimate goals of the correctional
6 institution or was not tailored narrowly enough to achieve such goals." Rizzo v. Dawson,
7 778 F.2d at 532.

8 Here, the connection between Plaintiff's grievance and Defendant's actions is not
9 clear. The Court cannot determine if Plaintiff feels Defendant issued a false RVR in
10 retaliation for the May 18, 2016 grievance or to dissuade Plaintiff from filing a second
11 grievance. The distinction is significant because Plaintiff must allege how Defendant
12 knew of whichever event is at the core of the retaliation and how Plaintiff knows or
13 believes Defendant's actions were in retaliation for either or both events. Plaintiff will be
14 given leave to amend. If he chooses to do so, he must demonstrate a causal link
15 between his protected activity and Defendant's retaliation for it.

16 **V. Conclusion**

17 Plaintiff's complaint will be dismissed. The Court will provide Plaintiff with the
18 opportunity to file an amended complaint, if he believes, in good faith, he can cure the
19 identified deficiencies. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez,
20 203 F.3d at 1130-31; Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff
21 amends, he may not change the nature of this suit by adding new, unrelated claims in his
22 amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

23 If Plaintiff files an amended complaint, it should be brief, Fed. R. Civ. P. 8(a), but
24 under section 1983, it must state what each named defendant did that led to the
25 deprivation of Plaintiff's constitutional rights and liability may not be imposed on
26 supervisory personnel under the theory of *respondeat superior*, Iqbal, 556 U.S. at 676-77;
27 Starr, 652 F.3d at 1205-07. Although accepted as true, the "[f]actual allegations must be
28 [sufficient] to raise a right to relief above the speculative level. . . ." Twombly, 550 U.S. at

1 555 (citations omitted).

2 Finally, an amended complaint supersedes the original complaint, Lacey v.
3 Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be
4 “complete in itself without reference to the prior or superseded pleading,” Local Rule 220.

5 Accordingly, it is HEREBY ORDERED that:

- 6 1. Plaintiff’s complaint (ECF No. 1) is DISMISSED with leave to amend;
- 7 3. The Clerk’s Office shall send Plaintiff a blank complaint form along with a
8 copy of the complaint filed June 6, 2017;
- 9 4. Within **thirty (30) days** from the date of service of this order, Plaintiff must
10 either file an amended complaint curing the deficiencies identified by the
11 Court in this order or a notice of voluntary dismissal;
- 12 5. If Plaintiff fails to comply with this order, this action will be dismissed,
13 without prejudice, for failure to prosecute and failure to obey a court order.

14
15 IT IS SO ORDERED.

16 Dated: August 22, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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