

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

MELVIN DISMUKE,

Plaintiff,

v.

OFFICER R. RODRIGUEZ, J.
COUGHLIN, S. PALOMARES, and
PALIMANO,

Defendants.

NO. CV-08-2444-EFS (PC)

**ORDER REQUIRING PLAINTIFF TO
FILE AN AMENDED COMPLAINT**

Before the Court is *pro se* state prisoner Plaintiff Melvin Dismuke's Complaint, alleging a violation of the Eighth Amendment under 42 U.S.C. § 1983. (Ct. Rec. 1.) Under the Prisoner Litigation Reform Act of 1995, the Court is required to screen prisoner complaints seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Claims that are legally frivolous or malicious, claims that fail to state a claim upon which relief may be granted, and claims that seek monetary relief from a defendant who is immune from such relief are properly dismissed. *Id.* §§ 1915A(b)(1), (2) & 1915(e)(2). After review, the Court finds the complaint states a plausible 42 U.S.C. § 1983 claim based on a violation of the Eighth Amendment's cruel and unusual punishment clause. However, the complaint

ORDER * 1

1 is deficient because it is unsigned. See FED. R. CIV. P. 11(a) (requiring
2 every pleading to be signed by either the attorney of record or the party
3 personally if the party is unrepresented). Accordingly, Plaintiff shall
4 file a **signed** amended complaint **no later than sixty (60) days** from the
5 date of this Order. The Court cautions Plaintiff that failure to comply
6 with this Order may result in dismissal of this action. Pursuant to 28
7 U.S.C. § 1915(g), a prisoner who brings three (3) or more civil actions
8 or appeals that are dismissed because they are legally frivolous,
9 malicious, or fail to state a claim, will be precluded from bringing any
10 other civil action or appeal *in forma pauperis* "unless the prisoner is
11 under imminent danger of serious physical injury."

12 Accordingly, **IT IS HEREBY ORDERED:** Plaintiff shall file a **signed**
13 amended complaint, which shall operate as a complete substitute for
14 previously submitted complaint, **no later than sixty (60) days** from the
15 date of this Order.

16 **IT IS SO ORDERED.** The District Court Executive is directed to enter
17 this Order and forward a copy to Plaintiff, along with a copy of the
18 Local Rules for the Eastern District of California.

19 **DATED** this 13th day of January 2009.

21 S/ Edward F. Shea
22 EDWARD F. SHEA
23 United States District Judge

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