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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

WILLIAM L. FOWLER,

No. 2:15-CV-0919-CMK-P

Plaintiff,

vs.

ORDER

FRED FOULK, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must

1 allege with at least some degree of particularity overt acts by specific defendants which support
2 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
3 impossible for the court to conduct the screening required by law when the allegations are vague
4 and conclusory.

5 Plaintiff names the following as defendants: (1) Fred Foulk, the prison warden;
6 (2) Suzanne Peery, the assistant prison warden; and (3) Bland, a correctional counselor. Plaintiff
7 alleges that defendants are responsible for injuries he sustained when he was attacked by two
8 inmates on October 10, 2014. According to plaintiff, defendants are liable because they knew
9 plaintiff had been attempting “to go to a lower level prison” due to his placement scores.

10 The treatment a prisoner receives in prison and the conditions under which the
11 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel
12 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,
13 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts
14 of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102
15 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.
16 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with
17 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,
18 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only
19 when two requirements are met: (1) objectively, the official’s act or omission must be so serious
20 such that it results in the denial of the minimal civilized measure of life’s necessities; and (2)
21 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of
22 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison
23 official must have a “sufficiently culpable mind.” See id.

24 Under these principles, prison officials have a duty to take reasonable steps to
25 protect inmates from physical abuse. See Hoptowit v. Ray, 682 F.2d 1237, 1250-51 (9th Cir.
26 1982); Farmer, 511 U.S. at 833. Liability exists only when two requirements are met:

1 (1) objectively, the prisoner was incarcerated under conditions presenting a substantial risk of
2 serious harm; and (2) subjectively, prison officials knew of and disregarded the risk. See Farmer,
3 511 U.S. at 837. The very obviousness of the risk may suffice to establish the knowledge
4 element. See Wallis v. Baldwin, 70 F.3d 1074, 1077 (9th Cir. 1995). Prison officials are not
5 liable, however, if evidence is presented that they lacked knowledge of a safety risk. See Farmer,
6 511 U.S. at 844. The knowledge element does not require that the plaintiff prove that prison
7 officials know for a certainty that the inmate's safety is in danger, but it requires proof of more
8 than a mere suspicion of danger. See Berg v. Kincheloe, 794 F.2d 457, 459 (9th Cir. 1986).
9 Finally, the plaintiff must show that prison officials disregarded a risk. Thus, where prison
10 officials actually knew of a substantial risk, they are not liable if they took reasonable steps to
11 respond to the risk, even if harm ultimately was not averted. See Farmer, 511 U.S. at 844.

12 Here, plaintiff does not allege any facts which even suggest that defendants
13 actually knew of any substantial risk to plaintiff's safety.

14 Because it does not appear possible that the deficiencies identified herein can be
15 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
16 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).
17 Plaintiff shall show cause in writing, within 30 days of the date of this order, why this action
18 should not be dismissed for failure to state a claim. Plaintiff is warned that failure to respond to
19 this order may result in dismissal of the action for the reasons outlined above, as well as for
20 failure to prosecute and comply with court rules and orders. See Local Rule 110.

21 IT IS SO ORDERED.

22
23 DATED: May 21, 2015

24 
25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE