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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACKIE M. JOHNSON,
Plaintiff,
v.
CALIFORNIA MEDICAL FACILITY,
et al.,
Defendants.

No. 2:15-cv-1609 DB P

ORDER

Plaintiff is a former state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. He has consented to the jurisdiction of a magistrate judge. (ECF No. 7.) Plaintiff’s first amended complaint is before the court for screening.

I. Screening Requirement

The in forma pauperis statute provides, “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

II. Pleading Standard

Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States.” Wilder v. Virginia Hosp.

1 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of
2 substantive rights, but merely provides a method for vindicating federal rights conferred
3 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

4 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
5 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
6 violation was committed by a person acting under the color of state law. See West v. Atkins, 487
7 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

8 A complaint must contain “a short and plain statement of the claim showing that the
9 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
10 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
11 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
12 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
13 matter, accepted as true, to state a claim to relief that is plausible on its face.” Id. Facial
14 plausibility demands more than the mere possibility that a defendant committed misconduct and,
15 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

16 **III. Plaintiff’s Allegations**

17 The conduct underlying this complaint occurred while plaintiff was housed at California
18 Medical Facility (“CMF”) in Vacaville, California. The caption of the pleading identifies these
19 defendants: J. Portee, A. Maszk, R. Anderson, S.W. Theard, Warden R. Fox “et al.” Plaintiff
20 names the defendants in their individual and official capacities.

21 As best as the court can determine, plaintiff alleges as follows:

22 Plaintiff is a Black inmate who suffers from a number of ailments, including post-
23 traumatic stress disorder, seizure disorder, and cardiovascular pulmonary problem. He is on
24 multiple medications, including “psy” medication.

25 Plaintiff complains of systemic discrimination and staff misconduct directed at Black
26 inmates at CMF. On an unspecified date, plaintiff was involved in an altercation with a White
27 inmate, J. Ferris. Although plaintiff was defending himself against the younger and larger Inmate
28 Ferris, plaintiff was charged with battery on an inmate and placed in the Secure Housing Unit

1 (“SHU”) term for 14 months. Inmate Ferris, on the other hand, served only 85 days. CCI
2 Thompson, in collusion with Inmate Ferris, sought multiple 90-day extensions of time to keep
3 plaintiff in administrative segregation.

4 On May 10, 2014, after his 14-month SHU term, plaintiff was transferred to a urine- and
5 feces-stained cell that used to belong to Inmate Ferris. This cell, with its high risk of infection,
6 was located in an area known to be loud and disconcerting all night long, providing no rest for the
7 nearby inmates. Plaintiff claims Inmate Ferris was taken out of this unit because he is White, and
8 plaintiff was placed there because he is Black. Plaintiff accuses Inmate Ferris of orchestrating the
9 move in collusion with CMF staff members, including CCI Thompson, CCI N. Clerk, CCI Carpe,
10 Sgt. R. Thomas, and Sgt. Infante. Plaintiff claims that “all Defendant[s]” knew of the high risk of
11 infection in this cell, but placed him there anyway. As a result, plaintiff suffered two staph
12 infections.

13 Black inmates are routinely assaulted and denied personal items, medication, and food.
14 Plaintiff complained of this conduct to the Warden, Associate Warden, and many others but to no
15 avail. Two months after plaintiff complained to Warden Fox, the Black inmates were moved to
16 another wing that was “worse” with no hot water in the cells. Only after the cells were closed by
17 “the Eastern District” were most Black inmates placed back in general population.

18 On an unspecified date, CO Partee and CO Maszk assaulted and pepper sprayed another
19 Black inmate, Inmate Hunt, who was not a threat to the officers. This conduct violated prison
20 regulations, was based on the inmate’s race, and amounted to excessive and unnecessary force.

21 Plaintiff experienced retaliation as a result of his complaints. These incidents include: (1)
22 CO Partee confiscated a court-ordered radio, saying “I run this shit up here you get what I give
23 you, for how ever [sic] long I give it to you, and you are not getting one.” CO Partee then ordered
24 additional strip searches on plaintiff in his own cell; (2) CO Partee and CO Tylor verbally
25 threatened plaintiff if he complained again; and (3) On January 23, 2015, Supervisor Jiminez sent
26 plaintiff a bag full of “dirty old used underwear” when plaintiff was placed in administrative
27 segregation. Plaintiff also experienced other forms of retaliation (withholding of money, refusal
28 to go to CMF canteen, etc.), but he does not link this conduct to any individual.

1 Plaintiff seeks damages.

2 **IV. Discussion**

3 **A. Linkage and Supervisory Liability**

4 Under Section 1983, plaintiff must demonstrate that each defendant personally
5 participated in the deprivation of his rights. See Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
6 2002). In other words, there must be an actual connection or link between the actions of the
7 defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Dep't of
8 Soc. Servs., 436 U.S. 658, 691, 695 (1978).

9 Plaintiff's pleading names R. Anderson and S.W. Theard, but fails to assert any charging
10 allegations as to them. Additionally, while plaintiff does name A. Maszk, it is in the context of an
11 assault on another inmate, not plaintiff himself. A pro se plaintiff may not represent anyone other
12 than himself or herself. See Campbell v. Burt, 141 F.3d 927, 931 (9th Cir. 1998); Johns v. County
13 of San Diego, 114 F.3d 874, 876 (9th Cir. 1997). These defendants must therefore be dismissed.

14 Plaintiff also identifies Warden Fox, but the allegations personal to this defendant are only
15 that Black inmates were moved to another wing at CMF two months after plaintiff drafted a letter
16 to him. It is unclear if plaintiff was one of the inmates who were moved. In any event, plaintiff
17 has not asserted any facts that would link these two events together, and the court declines to
18 impute knowledge on a defendant simply because an inmate addressed a letter to him.

19 Insofar as plaintiff accuses Warden Fox and others of supervisory liability, this claim also
20 fails. Government officials may not be held liable for the actions of their subordinates under a
21 theory of respondeat superior. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978). Since a
22 government official cannot be held liable under a theory of vicarious liability in § 1983 actions,
23 plaintiff must plead sufficient facts showing that the official has violated the Constitution through
24 his own individual actions by linking each named Defendant with some affirmative act or
25 omission that demonstrates a violation of Plaintiff's federal rights. Iqbal, 556 U.S. at 676.

26 Liability may be imposed on supervisory defendants under § 1983 only if the supervisor:
27 (1) personally participated in the deprivation of constitutional rights or directed the violations or
28 (2) knew of the violations and failed to act to prevent them. Hansen v. Black, 885 F.2d 642, 646

1 (9th Cir. 1989); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Defendants cannot be held
2 liable for being generally deficient in their supervisory duties.

3 **B. Eleventh Amendment Immunity**

4 Plaintiff names the defendants in their official and individual capacities, and he seeks only
5 monetary relief. “The Eleventh Amendment bars suits for money damages in federal court against
6 a state, its agencies, and state officials in their official capacities.” Aholelei v. Dept. of Public
7 Safety, 488 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted). However, the Eleventh
8 Amendment does not bar suits seeking damages against state officials in their personal capacities,
9 Hafer v. Melo, 502 U.S. 21, 30 (1991); Porter v. Jones, 319 F.3d 483, 491 (9th Cir. 2003), or suits
10 for declaratory or injunctive relief brought against state officials in their official capacities, Austin
11 v. State Indus. Ins. System, 939 F.2d 676, 680 fn.2 (9th Cir. 1991). Therefore, plaintiff’s claims
12 against the defendants in their official capacities must be dismissed.

13 **C. Fourteenth Amendment Equal Protection**

14 The Fourteenth Amendment's Equal Protection Clause “is essentially a direction that all
15 persons similarly situated should be treated alike.” City of Cleburne v. Cleburne Living Ctr., Inc.,
16 473 U.S. 432, 439 (1985); see also Hartmann v. California Dep’t of Corr. & Rehab., 707 F.3d
17 1114, 1123 (9th Cir. 2013). To bring a successful equal protection claim, a plaintiff must show
18 differential treatment from a similarly situated class. See Washington v. Davis, 426 U.S. 229, 239
19 (1976). For this differential treatment to give rise to a claim under 42 U.S.C. § 1983, “one must
20 show intentional or purposeful discrimination.” Draper v. Rhay, 315 F.2d 193, 198 (9th Cir.
21 1963) (inmate failed to show § 1983 violation in absence of “intentional or purposeful
22 discrimination”).

23 Plaintiff’s allegations fail to state an equal protection claim. While there are certain
24 allegations that, if true, suggest racial animus, they fail to provide the necessary nexus to the
25 conduct of any defendant. As for plaintiff’s challenge to a policy or practice of denying personal
26 products, medication and food to Black inmates, his allegations are far too conclusory to state a
27 claim.

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1 **D. First Amendment Retaliation**

2 “Within the prison context, a viable claim of First Amendment retaliation entails five
3 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)
4 because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s
5 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate
6 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

7 The second element focuses on causation and motive. See Brodheim v. Cry, 584 F.3d
8 1262, 1271 (9th Cir. 2009). A plaintiff must show that his protected conduct was a “substantial’
9 or ‘motivating’ factor behind the defendant’s conduct.” Id. (quoting Sorrano’s Gasco, Inc. v.
10 Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989). Although it can be difficult to establish the motive
11 or intent of the defendant, a plaintiff may rely on circumstantial evidence. Bruce v. Ylst, 351 F.3d
12 1283, 1289 (9th Cir. 2003) (finding that a prisoner established a triable issue of fact regarding
13 prison officials’ retaliatory motives by raising issues of suspect timing, evidence, and statements);
14 Hines v. Gomez, 108 F.3d 265, 267-68 (9th Cir. 1997); Pratt v. Rowland, 65 F.3d 802, 808 (9th
15 Cir. 1995) (“timing can properly be considered as circumstantial evidence of retaliatory intent”).

16 In terms of the third prerequisite, pursuing a civil rights legal action is protected activity
17 under the First Amendment. Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985).

18 With respect to the fourth prong, “[it] would be unjust to allow a defendant to escape
19 liability for a First Amendment violation merely because an unusually determined plaintiff
20 persists in his protected activity” Mendocino Env’tl. Ctr. v. Mendocino Cnty., 192 F.3d 1283,
21 1300 (9th Cir. 1999). The correct inquiry is to determine whether an official’s acts would chill or
22 silence a person of ordinary firmness from future First Amendment activities. Rhodes, 408 F.3d at
23 568-69 (citing Mendocino Env’tl. Ctr., 192 F.3d at 1300).

24 With respect to the fifth prong, a prisoner must affirmatively allege that “the prison
25 authorities’ retaliatory action did not advance legitimate goals of the correctional institution or
26 was not tailored narrowly enough to achieve such goals.” Rizzo v. Dawson, 778 F.2d 527, 532
27 (9th Cir. 1985).

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1 Plaintiff claims that, because of his complaints against CMF staff, he experienced
2 retaliation at the hands of CO Partee (who confiscated personal items and ordered unnecessary
3 strip searches), CO Partee and CO Tylor (who issued verbal threats), and Supervisor Jiminez
4 (who sent plaintiff a bag of dirty clothing). Plaintiff's allegation against CO Partee state a viable
5 claim in that he alleges this defendant was aware of plaintiff's complaints, acted with a
6 sufficiently culpable state of mind, and his conduct did not advance a legitimate correctional goal.
7 Plaintiff's allegations regarding verbal threats, however, fail because such conduct is not
8 actionable. See, e.g., Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987) (verbal
9 harassment or abuse is not constitutional deprivation under § 1983); Gaut v. Sunn, 810 F.2d 923,
10 925 (9th Cir. 1987) (prison guards' threat of bodily harm failed to state a claim under § 1983).
11 Plaintiff's allegations against Supervisor Jiminez also fail because there is an insufficient link
12 between this conduct and plaintiff's protected activity. And finally, plaintiff's remaining claims
13 of retaliation fail because they are not sufficiently linked to any individual.

14 **E. Eighth Amendment Conditions of Confinement**

15 Prison officials violate the Eighth Amendment's prohibition against cruel and unusual
16 punishment when they deny humane conditions of confinement with deliberate indifference.
17 Farmer, 511 U.S. at 832. To state a claim for such an Eighth Amendment violation, an inmate
18 must show both objective and subjective components. Clement v. Gomez, 298 F.3d 898, 904 (9th
19 Cir. 2002).

20 The objective component requires an "objectively insufficiently humane condition
21 violative of the Eighth Amendment" which poses a substantial risk of serious harm. Osolinski v.
22 Kane, 92 F.3d 934, 938 (9th Cir. 1996). The subjective component requires prison officials acted
23 with the culpable mental state, which is "deliberate indifference" to the substantial risk of serious
24 harm. Farmer, 511 U.S. at 837-38; Estelle v. Gamble, 429 U.S. 97, 104-06 (1976).

25 "[A] prison official cannot be found liable under the Eighth Amendment for denying an
26 inmate humane conditions of confinement unless the official knows of and disregards an
27 excessive risk to inmate health or safety; the official must both be aware of facts from which the
28 inference could be drawn that a substantial risk of serious harm exists, and he must also draw the

1 inference.” Farmer, 511 U.S. at 837.

2 Plaintiff contends that his Eighth Amendment rights were violated when he was placed in
3 Inmate Ferris’ former cell. Plaintiff accuses the defendants of knowing about the deplorable
4 conditions before they placed him there and that this conduct resulted in two staph infections.
5 These allegations fall short of stating an Eighth Amendment claim because plaintiff cannot rely
6 on a conclusory statement that that “all Defendant[s]” knew of the cell’s conditions; instead, he is
7 required to set forth “sufficient factual matter, accepted as true, to state a claim to relief that is
8 plausible on its face.” Iqbal, 556 U.S. at 678. Plaintiff also cannot simply allege CCI Thompson,
9 CCI N. Clerk, CCI Carpe, Sgt. R. Thomas, and Sgt. Infante orchestrated the move. Instead, he
10 must assert specific facts that identify the role of each of these defendants to the alleged violation
11 of plaintiff’s constitutional rights.

12 **F. Conspiracy**

13 A civil conspiracy is a combination of two or more persons who, by some concerted
14 action, intend to accomplish some unlawful objective for the purpose of harming another which
15 results in damage. Gilbrook v. City of Westminster, 177 F.3d 839, 856 (9th Cir. 1999).
16 “Conspiracy is not itself a constitutional tort under § 1983, and it does not enlarge the nature of
17 the claims asserted by the plaintiff, as there must always be an underlying constitutional
18 violation.” Lacey v. Maricopa Cnty., 693 F.3d 896, 935 (9th Cir. 2012) (en banc).

19 For a section 1983 conspiracy claim, “an agreement or meeting of minds to violate [the
20 plaintiff’s] constitutional rights must be shown.” Woodrum v. Woodward Cnty., 866 F.2d 1121,
21 1126 (9th Cir. 1989). However, “[d]irect evidence of improper motive or an agreement to violate
22 a plaintiff’s constitutional rights will only rarely be available. Instead, it will almost always be
23 necessary to infer such agreements from circumstantial evidence or the existence of joint action.”
24 Mendocino Env’tl. Ctr. v. Mendocino Cnty., 192 F.3d 1283, 1302 (9th Cir. 1999). Therefore, “an
25 agreement need not be overt, and may be inferred on the basis of circumstantial evidence such as
26 the actions of the defendants.” Id. at 1301.

27 Plaintiff accuses the defendants of conspiring with Inmate Ferris to violate plaintiff’s
28 constitutional rights. As discussed supra, plaintiff’s sole viable claim is a retaliation claim against

1 CO Partee. Plaintiff's allegations of conspiracy as to this claim, as well as the other non-viable
2 claims, are simply too vague and speculative to suggest a meeting of the minds.

3 **V. Conclusion**

4 Plaintiff's first amended complaint states a First Amendment retaliation claim against CO
5 Partee. All other claims and defendants must be dismissed. Plaintiff will, however, be granted
6 leave to amend.

7 If plaintiff chooses to amend the complaint, he must demonstrate how the conditions
8 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
9 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how
10 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there
11 is some affirmative link or connection between a defendant's actions and the claimed deprivation.
12 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
13 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
14 allegations of official participation in civil rights violations are not sufficient. Ivey v. Bd. of
15 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

16 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
17 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
18 complaint be complete in itself without reference to any prior pleading. This is because, as a
19 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
20 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
21 longer serves any function in the case. Therefore, in an amended complaint, as in an original
22 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

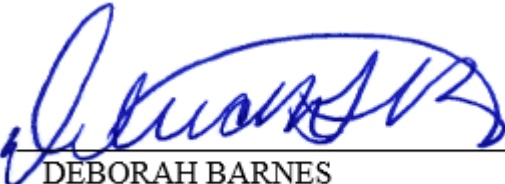
23 In accordance with the above, IT IS HEREBY ORDERED that:

- 24 1. The Clerk's Office shall send Plaintiff a blank civil rights complaint form;
- 25 2. Within thirty (30) days from the date of service of this order, plaintiff must either:
- 26 a. File a second amended complaint curing the deficiencies identified by the
- 27 court in this order, or
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- b. Notify the court in writing that he does not wish to file an amended complaint and he is willing to proceed only on the claim found to be cognizable in this order; and
- 3. If plaintiff fails to comply with this order, the undersigned will dismiss this action for failure to obey a court order and failure to prosecute.

Dated: April 12, 2017



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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