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

KERRY LATHAN,

No. 2:16-CV-0757-TLN-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

CALIFORNIA DEPT. OF
CORRECTIONS, 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).

1 This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,
2 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
3 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon
4 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
5 allege with at least some degree of particularity overt acts by specific defendants which support
6 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
7 impossible for the court to conduct the screening required by law when the allegations are vague
8 and conclusory.

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10 **I. PLAINTIFF'S ALLEGATIONS**

11 Plaintiff names the following as defendants: (1) "California Department of
12 Corrections;" (2) "California Board of Prison Hearings;" (3) "Warden of CHFC;" (4) Jennifer
13 Schaffer; (5) James Rukop, Ph.D.; (6) Scott Kernan; (7) Witcher; (8) J. Medina; (9) G. Mitchell;
14 (10) L. Bowen; (11) J. Voletti; (12) D. Armand; and (13) S. Kneri. Plaintiff seeks complete
15 expungement of any and all references to an "R" suffix in his official records as well as monetary
16 damages.

17 Plaintiff claims that, despite not having been convicted of a sex offense, an "R"
18 suffix has been placed in his official file. Plaintiff documents various efforts over the years to
19 have the "R" suffix removed, including a determination by prison officials in June 1999 that the
20 "R" suffix should indeed be removed from plaintiff's file. Nonetheless, according to plaintiff the
21 "R" suffix remains and has affected his classification level. Plaintiff does not allege that the "R"
22 suffix classification has been made known to other inmates or that he has suffered any actual
23 injury as a result of the "R" suffix classification.

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1 **II. DISCUSSION**

2 While the legal basis for plaintiff’s claim is unclear, to the extent plaintiff is
3 asserting a due process claim based on the existence of the “R” suffix in his file and the effect
4 that has had on his classification, the court observes that prisoners have no liberty interest in their
5 classification status. See Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976); Hernandez v. Johnston,
6 833 F.2d 1316, 1318 (9th Cir. 1987).

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

22 Under these principles, prison officials have a duty to take reasonable steps to
23 protect inmates from physical abuse. See Hoptowit v. Ray, 682 F.2d 1237, 1250-51 (9th Cir.
24 1982); Farmer, 511 U.S. at 833. Liability exists only when two requirements are met:
25 (1) objectively, the prisoner was incarcerated under conditions presenting a substantial risk of
26 serious harm; and (2) subjectively, prison officials knew of and disregarded the risk. See Farmer,

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

10 In this case, plaintiff has not alleged any facts to indicate that he was incarcerated
11 under conditions presenting a substantial risk to his personal safety. While plaintiff alleges that
12 other inmates have been subject to assaults because they were known to the general population as
13 a sex offender with an "R" suffix, plaintiff does not allege that anyone in the general population
14 knew of the existence of the "R" suffix in plaintiff's file. Moreover, plaintiff does not allege any
15 facts to suggest that, despite their knowledge of the existence of an "R" suffix in plaintiff's file,
16 any named defendant disregarded the potential risk by allowing that information to be generally
17 known within the prison population. Here, plaintiff has alleged no more than a mere suspicion of
18 danger, which does not amount to a cognizable claim.

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1 **III. CONCLUSION**

2 Because it does not appear possible that the deficiencies identified herein can be
3 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
4 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

5 Based on the foregoing, the undersigned recommends that action be dismissed for
6 failure to state a claim.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court. Responses to objections shall be filed within 14 days after service of
11 objections. Failure to file objections within the specified time may waive the right to appeal.
12 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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14 DATED: August 23, 2017

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16 **CRAIG M. KELLISON**
17 UNITED STATES MAGISTRATE JUDGE
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