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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERNEST DOTSON,

 Plaintiff,

 v.

J. HILTON,

 Defendant.

No. 2:16-cv-2391 AC P

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff has consented to the jurisdiction of the undersigned magistrate judge for all purposes pursuant to 28 U.S.C. § 636(c) and Local Rule 305(a). ECF No. 4.

I. Request to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff’s trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments

1 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.
2 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
3 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §
4 1915(b)(2).

5 II. Screening Requirement

6 The court is required to screen complaints brought by prisoners seeking relief against a
7 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
8 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
9 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
10 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
13 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
14 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
15 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
16 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
17 Cir. 1989); Franklin, 745 F.2d at 1227.

18 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
19 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
20 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
21 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
22 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
23 this standard, the court must accept as true the allegations of the complaint in question, Hosp.
24 Bldg. Co. v. Trs. of Rex Hosp., 425 U.S. 738, 740 (1976), construe the pleading in the light most
25 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v. McKeithen, 395
26 U.S. 411, 421 (1969).

27 III. Plaintiff's Allegations

28 In the complaint, plaintiff alleges that he was stabbed in a prison yard "race riot" at

1 California State Prison-Solano¹ and sustained several injuries, including a collapsed lung. ECF
2 No. 1 at 5-6. Plaintiff asserts that “[i]t is customary for Solano correctional officers to observe a
3 disturbance and respond after the disturbance has become an incident.” Id. at 4. With the respect
4 to the incident at issue here, plaintiff alleges that defendants observed “Hispanic and black
5 inmates pushing and shoving on the football field, but failed to prevent further disturbance.” Id.
6 at 5. Plaintiff alleges that defendant Hilton “observed a mass of inmates moving from the
7 baseball diamond, out of his sight, to the front of building (4) then, a racial riot broke out and
8 several inmates attempted to murder [plaintiff].” Id. Plaintiff further claims that defendant
9 Hilton admitted to plaintiff that he had observed “the pushing and shoving on the football field”
10 and asked plaintiff whether he was a part of it. Id. Plaintiff argues that defendants failed to
11 protect him “when they could have prevented the race riot before it happened.” Id. at 6. Plaintiff
12 alleges that “[h]ad they called a code when the pushing and shoving happened, [he] never would
13 have been stabbed.” Id.

14 Plaintiff seeks monetary damages under 42 U.S.C. § 1983 against defendants for failing to
15 prevent the riot that resulted in the stabbing of plaintiff. Id. at 6.

16 Under the “Parties” section of the complaint, plaintiff identifies only correctional officer
17 Hilton as a defendant. Id. at 2. The body of the complaint, however, also refers generally to
18 “defendants” and correctional “officers.”

19 IV. Equal Protection

20 The complaint identifies only one claim: “Deprivation of equal protection of the law.” Id.
21 at 4. The Fourteenth Amendment’s Equal Protection Clause “is essentially a direction that all
22 persons similarly situated should be treated alike.” City of Cleburne v. Cleburne Living Ctr., Inc.,
23 473 U.S. 432, 439 (1985); see also Hartmann v. California Dep’t of Corr. & Rehab., 707 F.3d
24 1114, 1123 (9th Cir. 2013). To bring a successful equal protection claim, a plaintiff must show
25 differential treatment from a similarly situated class. See Washington v. Davis, 426 U.S. 229,
26 239 (1976). For this differential treatment to give rise to a claim under 42 U.S.C. § 1983, “one

27 ¹ The California Department of Corrections online inmate locator service shows plaintiff is
28 currently incarcerated at California State Prison-Sacramento.

1 must show intentional or purposeful discrimination.” Draper v. Rhay, 315 F.2d 193, 198 (9th Cir.
2 1963) (inmate failed to show § 1983 violation in absence of “intentional or purposeful
3 discrimination”). The complaint is devoid of any allegations required for an equal protection
4 claim. Therefore, plaintiff has failed to state a cognizable equal protection claim.

5 V. Eighth Amendment-Failure to Protect

6 Based on the allegations in the complaint, it appears that plaintiff is attempting to assert a
7 claim for failure to protect. Under the Eighth Amendment, “prison officials have a duty . . . to
8 protect prisoners from violence at the hands of other prisoners.” Farmer v. Brennan, 511 U.S.
9 825, 833 (1994) (quoting CortesQuinones v. Jimenez–Nettleship, 842 F.2d 556, 558 (1st Cir.
10 1988)). To establish a violation of this duty, a prisoner must demonstrate that prison officials
11 were “deliberately indifferent to a serious threat to the inmate’s safety.” Farmer, 511 U.S. at 834.
12 This requires the prisoner to satisfy both an objective and a subjective component. First, the
13 alleged facts must demonstrate that the alleged deprivation was, in objective terms, “sufficiently
14 serious.” Id. at 834 (quoting Wilson v. Seitzer, 501 U.S. 294, 298 (1991)). Second, the alleged
15 facts must demonstrate that prison officials acted with a sufficiently culpable state of mind.
16 Prison officials must have known of and disregarded an excessive risk to the prisoner’s safety.
17 Id. at 837. Thus, “the official must both be aware of facts from which the inference could be
18 drawn that a substantial risk of serious harm exists, and he must also draw that inference.” Id.
19 However, a prison official who knows of a substantial risk to an inmate’s health or safety but acts
20 reasonably under the circumstances will not be held liable under the cruel and unusual
21 punishment clause, even if the threatened harm results. Id. at 843.

22 In his complaint, plaintiff suggests that defendants knew that a riot was about to erupt, but
23 failed to prevent it. Plaintiff claims that if defendants had “called a code when the pushing and
24 shoving happened,” plaintiff would not have been stabbed. ECF No. 1 at 6. These allegations
25 fail to raise any putative failure to protect claim above the speculative level. Moreover, to
26 warrant relief under § 1983, plaintiff must affirmatively link these actions to specific defendants.
27 See Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). Although plaintiff identifies correctional
28 officer Hilton as a defendant, he fails to identify any other prison officials by name. It is

1 insufficient for plaintiff to simply allege that prison officials, in general, were somehow complicit
2 in the riot that resulted in the stabbing of plaintiff. In addition, plaintiff has not alleged that
3 prison officials were deliberately indifferent to a serious threat to plaintiff's safety. Plaintiff fails
4 to set forth any factual allegations raising a plausible inference that, prior to the riot, any
5 defendant was subjectively aware of any substantial risk of harm to plaintiff, or that any official
6 failed to take any action that could have prevented the resulting harm. Accordingly, plaintiff
7 vague allegations fail to state a cognizable failure to protect claim.

8 VI. Leave to Amend

9 The court will provide plaintiff an opportunity to amend the complaint. If plaintiff
10 chooses to amend the complaint, plaintiff must demonstrate how the conditions complained of
11 have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d
12 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how each named defendant
13 is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative
14 link or connection between a defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at
15 370-71; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740,
16 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in
17 civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir.
18 1982).

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

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


- 27 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.
- 28 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff

1 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
2 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
3 Director of the California Department of Corrections and Rehabilitation filed concurrently
4 herewith.

5 3. Plaintiff's complaint (ECF No. 1) is dismissed.

6 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
7 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
8 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
9 assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and
10 two copies of the amended complaint; failure to file an amended complaint in accordance with
11 this order will result in a recommendation that this action be dismissed.

12 DATED: March 30, 2017

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14 ALLISON CLAIRE
15 UNITED STATES MAGISTRATE JUDGE
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