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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLOS DANIEL OSORIO ZUNIGA,
Plaintiff,
v.
RIO COSUMNES CORRECTIONAL
CENTER,
Defendant.

No. 2:16-cv-2486 KJN P

ORDER

Introduction

Plaintiff is an immigration detainee, 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. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Request to Proceed In Forma Pauperis

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus must pay a filing fee of \$400.00.¹ See 28

¹ In addition to the \$350.000 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay an additional administrative fee of \$50.00. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fees Schedule) (eff. May 1, 2013.) However, the additional \$50 administrative fee is waived if the plaintiff is granted leave to proceed in forma pauperis. Id.

1 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only
2 if the plaintiff is granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). See
3 Rodriguez v. Gook, 169 F.3d 1176, 1177 (9th Cir. 1999). However, “[u]nlike other indigent
4 litigants, prisoners proceeding IFP must pay the full amount of filing fees in civil actions and
5 appeals pursuant to the PLRA [Prison Litigation Reform Act].” Agyeman v. INS, 296 F.3d 871,
6 886 (9th Cir. 2002). As defined by the PLRA, a “prisoner” is “any person incarcerated or
7 detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent
8 for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or
9 diversionary program.” 28 U.S.C. § 1915(h). Under this definition, “an alien detained by the
10 INS pending deportation is not a ‘prisoner’ within the meaning of the PLRA,” because
11 deportation proceedings are civil, rather than criminal in nature, and an alien detained pending
12 deportation has not necessarily been “accused of, convicted of, sentenced or adjudicated
13 delinquent for, a violation of criminal law.” Agyeman, 296 F.3d at 886. Thus, because plaintiff
14 claims to be an immigration detainee, and not a “prisoner” as defined by 28 U.S.C. § 1915(h), the
15 filing fee provisions of 28 U.S.C. § 1915(b) do not apply.

16 Good cause appearing, plaintiff’s application to proceed in forma pauperis is granted.

17 Screening Standard

18 Because plaintiff is appearing without counsel, the court must liberally construe his
19 pleadings. Eldridge v. Block, 832 F.2d 1132, 1137 (9th Cir. 1987) (citing Boag v. MacDougall,
20 454 U.S. 364, 365 (1982)) (“The Supreme Court has instructed the federal courts to liberally
21 construe the ‘inartful pleading’ of pro se litigants.”). Despite the liberal pro se pleading standard,
22 however, the court must subject each civil action commenced pursuant to 28 U.S.C. § 1915(a) to
23 mandatory screening and order the dismissal of any claim it finds “frivolous, malicious, failing to
24 state a claim upon which relief may be granted, or seeking monetary relief from a defendant
25 immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); Lopez v. Smith, 203 F.3d 1122, 1127 (9th
26 Cir. 2000) (stating that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua
27 sponte dismiss an in forma pauperis complaint that fails to state a claim); Calhoun v. Stahl, 254
28 F.3d 845, 845 (9th Cir. 2001) (holding that the provisions of 28 U.S.C. § 1915(e)(2)(B) are not

1 limited to prisoners).

2 Discussion

3 First, the initiating document filed by plaintiff and his now-dismissed co-plaintiff was not
4 filed on a complaint form or written in a complaint format. Rather, the plaintiffs wrote a letter
5 complaining of living conditions at the Rio Cosumnes Correctional Center (“RCCC”), which they
6 contend is very old and run down. (ECF No. 1 at 1.) They claim that even though they were
7 detainees and not prisoners, they were forced to wear RCCC or Sacramento County prisoner
8 clothes, subjecting them to treatment as prisoners rather than detainees. Specifically, they
9 contend they were required to follow rules in the Sacramento County handbook, not the ICE
10 handbook; clothing was torn, old, unclean and insufficient; food soup containers had holes which
11 retained dirty water and detergent used when cleaning; law library was insufficient, materials
12 were outdated, and there was only one computer with immigration information; the “tanks” were
13 small, crowded, with insufficient sitting or dining room; tight living quarters; mice/rats running
14 around; electrical wires hanging loosely, poor ventilation; lead paint; no toothbrushes; insufficient
15 soap to shower; food trays washed in showers; barbershop sink clogged with hair; inadequate
16 medical/mental health care; and medication/pill call random and usually late at night. Plaintiffs
17 state these events took place from August 2015 to January 2016. (ECF No. 1 at 3.)

18 Such letter does not comport with Rule 10 of the Federal Rules of Civil Procedure because
19 it does not contain a caption, and does not identify all of the parties or specific Constitutional
20 violations plaintiff alleges. Fed. R. Civ. P. 10.

21 Second, plaintiff does not identify any individual as a defendant. The Civil Rights Act
22 under which this action was filed provides as follows:

23 Every person who, under color of [state law] . . . subjects, or causes
24 to be subjected, any citizen of the United States . . . to the
25 deprivation of any rights, privileges, or immunities secured by the
26 Constitution . . . shall be liable to the party injured in an action at
27 law, suit in equity, or other proper proceeding for redress.

28 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
Monell v. Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not intend § 1983

1 liability to attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976) (no
2 affirmative link between the incidents of police misconduct and the adoption of any plan or policy
3 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another
4 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an
5 affirmative act, participates in another’s affirmative acts or omits to perform an act which he is
6 legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy,
7 588 F.2d 740, 743 (9th Cir. 1978).

8 Although supervisory government officials may not be held liable for the unconstitutional
9 conduct of their subordinates under a theory of respondeat superior, Ashcroft v. Iqbal, 556 U.S.
10 662, 676 (2009), they may be individually liable under Section 1983 if there exists “either (1) [the
11 supervisor’s] personal involvement in the constitutional deprivation; or (2) a sufficient causal
12 connection between the supervisor’s wrongful conduct and the constitutional violation.” Hansen
13 v. Black, 885 F.2d 642, 646 (9th Cir. 1989). The requisite causal connection between a
14 supervisor’s wrongful conduct and the violation of the prisoner’s constitutional rights can be
15 established in a number of ways, including by demonstrating that a supervisor’s own culpable
16 action or inaction in the training, supervision, or control of his subordinates was a cause of
17 plaintiff’s injury. Starr v. Baca, 652 F.3d 1202, 1208 (9th Cir. 2011); Larez v. City of Los
18 Angeles, 946 F.2d 630, 646 (9th Cir. 1991). A plaintiff must also show that the supervisor had
19 the requisite state of mind to establish liability, which turns on the requirement of the particular
20 claim -- and, more specifically, on the state of mind required by the particular claim -- not on a
21 generally applicable concept of supervisory liability. Oregon State University Student Alliance v.
22 Ray, 699 F.3d 1053, 1071 (9th Cir. 2012).

23 Plaintiff is advised that the RCCC is not a proper defendant. State agencies, such as the
24 California Department of Corrections and Rehabilitation (CDCR) and RCCC, are immune from
25 suit under the Eleventh Amendment. See Will v. Michigan Dep’t of State Police, 491 U.S. 58, 66
26 (1989); Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam) (holding that
27 prisoner’s Eighth Amendment claims against CDCR for damages and injunctive relief were
28 barred by Eleventh Amendment immunity); Pennhurst State Sch. & Hosp. v. Halderman, 465

1 U.S. 89, 100 (1984) (Eleventh Amendment immunity extends to state agencies). Thus, plaintiff
2 should not name RCCC as a defendant in any amended complaint.

3 Third, plaintiff does not identify the relief sought. Plaintiff must set forth the relief he
4 seeks. Now that plaintiff has been transferred to the Mesa Verde Detention Facility, it does not
5 appear that plaintiff could seek injunctive relief based on incidents that took place at RCCC.

6 For all of the above reasons, the original filing must be dismissed. The court, however,
7 grants plaintiff leave to file an amended complaint. The following standards that govern the
8 claims raised in the initial filing may assist plaintiff in drafting his amended complaint.

9 Certain rights of detainees, like those of convicted prisoners, “may be limited or retracted
10 if required to ‘maintain institutional security and preserve internal order and discipline.’” Pierce
11 v. County of Orange, 526 F.3d 1190, 1209 (9th Cir. 2008). However, a civil detainee “cannot be
12 subjected to conditions that ‘amount to punishment.’” Jones v. Blanas, 393 F.3d 918, 931-32 (9th
13 Cir. 2004) (explaining that conditions of confinement claims brought by civil detainees are
14 evaluated under the “more protective” Fourteenth Amendment substantive due process standard,
15 and that civil detainees are entitled to less restrictive treatment than criminally convicted
16 prisoners) (quoting Bell v. Wolfish, 441 U.S. 520, 535 (1979)).

17 Punitive conditions may be shown (1) where the challenged restrictions are expressly
18 intended to punish; or (2) where the challenged restrictions serve an alternative non-punitive
19 purposes but are nonetheless excessive in relation to the alternative purpose, or are employed to
20 achieve objectives that could be accomplished by alternative and less harsh methods. Id.
21 Legitimate, non-punitive government interests include ensuring a detainee’s presence at trial,
22 maintaining jail security, and effective management of a detention facility. Id.

23 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
24 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. Rizzo v.
25 Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each
26 named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is
27 some affirmative link or connection between a defendant’s actions and the claimed deprivation.
28 Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743

1 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil
2 rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

- 12 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 13 2. Plaintiff's original filing (ECF No. 1) is dismissed.
- 14 3. Within thirty days from the date of this order, plaintiff shall complete the attached

15 Notice of Amendment and submit the following documents to the court:

- 16 a. The completed Notice of Amendment; and
- 17 b. An original and one copy of the Amended Complaint.

18 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
19 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
20 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

21 Failure to file an amended complaint in accordance with this order may result in the
22 dismissal of this action.

23 4. The Clerk of the Court shall send plaintiff the form for filing a civil rights complaint by
24 a prisoner.

25 Dated: March 7, 2017

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28 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
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v.
RIO COSUMNES CORRECTIONAL
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No. 2:16-cv-2486 KJN P

NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order
filed _____.

DATED: _____ Amended Complaint

Plaintiff