

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD ANTHONY EVANS,

No. 2:17-cv-01888 AC P

Plaintiff,

v.

ORDER

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,

Defendant.

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint (ECF No. 1), plaintiff has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. ECF Nos. 2, 5.

I. Application to Proceed In Forma Pauperis

The court has reviewed plaintiff’s application and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

II. Screening Requirements

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The

1 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
2 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
3 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

4 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
5 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
6 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
7 meritless legal theories or whose factual contentions are clearly baseless.” Jackson v. Arizona,
8 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute
9 on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490
10 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,
11 has an arguable legal and factual basis. Id.

12 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
13 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
14 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
15 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
16 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
17 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
18 allegations sufficient “to raise a right to relief above the speculative level.” Id. (citations
19 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
20 merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original)
21 (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d
22 ed. 2004)).

23 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
24 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell
25 Atl. Corp., 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
26 content that allows the court to draw the reasonable inference that the defendant is liable for the
27 misconduct alleged.” Id. (citing Bell Atl. Corp., 550 U.S. at 556). In reviewing a complaint
28 under this standard, the court must accept as true the allegations of the complaint in question,

1 Hospital Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), as well as construe the pleading
2 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, Jenkins v.
3 McKeithen, 395 U.S. 411, 421 (1969).

4 **III. Screening Order**

5 Plaintiff alleges that, upon arrival at Deuel Vocation Institution (“DVI”), he asked
6 defendant Harrison¹ for assignment to administrative segregation “do (sic) to [his] charges.”
7 ECF No. 1 at 3. He emphasizes that he was assigned to administrative segregation at his prior
8 institution and should have retained that status at DVI. Id. Harrison allegedly denied plaintiff’s
9 request and assigned him to a non-segregated cell where, after approximately twenty minutes, he
10 was physically assaulted by his cell mate. Id. Plaintiff alleges that this incident left him with
11 bruises to his face and body, as well as post-traumatic stress syndrome. Id.

12 It is well settled that “[p]rison officials have a duty . . . to protect prisoners from violence
13 at the hands of other prisoners.” Farmer v. Brennan, 511 U.S. 825, 833 (1994). “The failure of
14 prison officials to protect inmates from attacks by other inmates may rise to the level of an Eighth
15 Amendment violation when: (1) the deprivation alleged is objectively, sufficiently serious and (2)
16 the prison officials had a sufficiently culpable state of mind, acting with deliberate indifference.”
17 Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005) (citing Farmer, 511 U.S. at 834) (internal
18 quotation marks omitted). “Deliberate indifference entails something more than mere negligence
19 . . . [but] is satisfied by something less than acts or omissions for the very purpose of causing
20 harm or with knowledge that harm will result.” Id. (quoting Farmer, 511 U.S. at 835).

21 The court concludes that additional information is necessary to determine whether
22 plaintiff has stated a cognizable Eighth Amendment failure to protect claim against defendant
23 Harrison. Although plaintiff alleges that the nature of his “charges” should have entitled to him
24 to a segregated housing assignment, he has not specified what those conviction(s) are. He has
25 also failed to allege whether his conviction(s) were the underlying rationale for his cell mate’s

27 ¹ Defendant Harrison is not yet listed on the docket of this case. The court will direct the clerk of
28 court to add him as a defendant.

1 attack. Next, although plaintiff alleges that he was housed in administrative segregation prior to
2 his incarceration at DVI, he has not alleged why his previous custodians thought that assignment
3 necessary. If, for instance, plaintiff had been assigned to administrative segregation in his
4 previous institution for disciplinary reasons, Harrison would not have had reason to believe that a
5 similar assignment was necessary for plaintiff's protection. Last, plaintiff states that he should
6 have seen a psychiatric provider upon arrival at DVI (ECF No. 1 at 3), but it is unclear if this
7 allegation is relevant to his failure to protect claim against Harrison or, instead, a separate claim
8 against unspecified defendants.

9 The court notes that a single paragraph comprises the entirety of plaintiff's complaint. Id.
10 Although brevity is almost always favored under the federal pleading standards, a plaintiff should
11 take care to allege the facts necessary to support his intended claim. A court cannot assume that a
12 plaintiff "can prove facts that [he has] not alleged or that the defendant has violated the . . . laws
13 in ways that have not been alleged[.]" Associated General Contractors v. Cal. State Council of
14 Carpenters, 459 U.S. 519, 526 (1983).

15 Finally, the court notes that, although plaintiff has included the California Department of
16 Corrections and Rehabilitation as a defendant in the caption of this case, he has failed to allege
17 any specific wrongdoing on the part of this defendant. In any event, while the Eleventh
18 Amendment does not prohibit suits against state officials in certain circumstances, it does erect a
19 bar to suits against the state itself or its agencies. See Pennhurst State Sch. & Hosp. v.
20 Halderman, 465 U.S. 89, 100 (1984); see also Brown v. Cal. Dep't of Corr., 554 F.3d 747, 752
21 (9th Cir. 2009) ("The district court correctly held that the California Department of Corrections
22 and the California Board of Prison Terms were entitled to Eleventh Amendment immunity.").

23 **IV. Leave to Amend**

24 Plaintiff's complaint is dismissed with leave to amend. If plaintiff chooses to file an
25 amended complaint it should observe the following:

26 Any amended complaint must identify as a defendant only persons who personally
27 participated in a substantial way in depriving him of a federal constitutional right. Johnson v.
28 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a

1 constitutional right if he does an act, participates in another's act or omits to perform an act he is
2 legally required to do that causes the alleged deprivation). The complaint should also describe, in
3 sufficient detail, how each defendant personally violated or participated in the violation of his
4 rights. The court will not infer the existence of allegations that have not been explicitly set forth
5 in the amended complaint.

6 The amended complaint must contain a caption including the names of all defendants.
7 Fed. R. Civ. P. 10(a).

8 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See
9 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

10 Any amended complaint must be written or typed so that it so that it is complete in itself
11 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
12 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
13 earlier filed complaint no longer serves any function in the case. See Forsyth v. Humana, 114
14 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
15 being treated thereafter as non-existent.”) (quoting Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
16 1967)).

17 Finally, the court notes that any amended complaint should be as concise as possible in
18 fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of
19 procedural or factual background which has no bearing on his legal claims.

20 **V. Summary of the Order for Pro Se Litigant**

21 You have been granted in forma pauperis status and will not have to pay the entire filing
22 fee immediately.

23 The court has found that your allegations, as stated, are not enough to establish a failure to
24 protect claim against defendant Harrison. The screening order has identified several factual gaps
25 which your allegations should address in order to state a cognizable Eighth Amendment claim.
26 You may do so by filing an amended complaint. Most importantly, the amended complaint
27 should say what specific information Harrison had that let him know you would be in danger of
28 assault unless you were placed in ad seg.

