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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

GUSTAVO COLIN LOPEZ,

Plaintiff,

v.

WARDEN, SAN QUENTIN PRISON, et
al.,

Defendants.

Case No. 19-cv-04108-RMI

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Re: Dkt. No. 1

Plaintiff, a federal prisoner, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed *in forma pauperis*, and has consented to the jurisdiction of a Magistrate Judge (dkt. 5).

DISCUSSION

Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In the course of this review, the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” While specific facts are not necessary, the statement should impart fair notice of the nature of the claim and the grounds upon which it rests.

1 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). While it is true that a complaint “does not need
2 detailed factual allegations . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment]
3 to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a
4 cause of action will not do . . . [the] [f]actual allegations must be enough to raise a right to relief
5 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
6 omitted). A complaint must therefore proffer “enough facts to state a claim to relief that is
7 plausible on its face.” *Id.* at 570. The “plausible on its face” standard of *Twombly* has been
8 explained as such: “[w]hile legal conclusions can provide the framework of a complaint, they must
9 be supported by factual allegations. When there are well-pleaded factual allegations, a court
10 should assume their veracity and then determine whether they plausibly give rise to an entitlement
11 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
13 that a right secured by the Constitution or laws of the United States was violated; and, (2) that the
14 alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*,
15 487 U.S. 42, 48 (1988).

16 **Legal Claims**

17 Plaintiff alleges that defendants failed to protect him from an assault by another inmate.

18 The Eighth Amendment requires that prison officials take reasonable measures to
19 guarantee the safety of prisoners. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). In particular,
20 prison officials have a duty to protect prisoners from violence at the hands of other prisoners. *Id.*
21 at 833; *Cortez v. Skol*, 776 F. 3d 1046, 1050 (9th Cir. 2015); *Hearns v. Terhune*, 413 F.3d 1036,
22 1040 (9th Cir. 2005). The failure of prison officials to protect inmates from attacks by other
23 inmates or from dangerous conditions at the prison violates the Eighth Amendment when two
24 requirements are met: (1) the deprivation alleged is, objectively, sufficiently serious; and (2) the
25 prison official is, subjectively, deliberately indifferent to inmate health or safety. *Farmer*, 511 U.S.
26 at 834. A prison official is deliberately indifferent if she or he knows of and disregards an
27 excessive risk to inmate health or safety by failing to take reasonable steps to abate it. *Id.* at 837.

28 “In a § 1983 or a *Bivens* action – where masters do not answer for the torts of their servants

1 – the term ‘supervisory liability’ is a misnomer. Absent vicarious liability, each Government
2 official, his or her title notwithstanding, is only liable for his or her own misconduct.” *Iqbal*, 556
3 U.S. at 677 (finding under *Twombly*, 550 U.S. at 544, and Rule 8 of the Federal Rules of Civil
4 Procedure, that complainant-detainee in a *Bivens* action failed to plead sufficient facts “plausibly
5 showing” that top federal officials “purposely adopted a policy of classifying post-September-11
6 detainees as ‘of high interest’ because of their race, religion, or national origin” over more likely
7 and non-discriminatory explanations).

8 A supervisor may be liable under section 1983 upon a showing of (1) personal
9 involvement in the constitutional deprivation or (2) a sufficient causal connection between the
10 supervisor’s wrongful conduct and the constitutional violation. *Henry A. v. Willden*, 678 F.3d 991,
11 1003-04 (9th Cir. 2012). Even if a supervisory official is not directly involved in the allegedly
12 unconstitutional conduct, “[a] supervisor can be liable in this individual capacity for his own
13 culpable action or inaction in the training, supervision, or control of his subordinates; for his
14 acquiescence in the constitutional deprivation; or for conduct that showed a reckless or callous
15 indifference to the rights of others.” *Starr v. Baca*, 652 F.3d 1202, 1208 (9th Cir. 2011) (citation
16 omitted). The claim that a supervisory official “knew of unconstitutional conditions and ‘culpable
17 actions of his subordinates’ but failed to act amounts to ‘acquiescence in the unconstitutional
18 conduct of his subordinates’ and is ‘sufficient to state a claim of supervisory liability.’” *Keates v.*
19 *Koile*, 883 F.3d 1228, 1243 (9th Cir. 2018) (quoting *Starr*, 652 F.3d at 1208) (finding that
20 conclusory allegations that supervisor promulgated unconstitutional policies and procedures which
21 authorized unconstitutional conduct of subordinates do not suffice to state a claim of supervisory
22 liability).

23 Plaintiff argues that he was mistakenly released from federal custody and transferred to
24 San Quentin State Prison (“SQSP”) while he awaited deportation by federal authorities. *Compl.*
25 (dkt. 1) at 3. At SQSP Plaintiff was walking to his housing unit when a riot broke out on the yard,
26 during which he was assaulted by an unknown individual. *Id.* Plaintiff states he was rendered
27 unconscious and suffered serious injuries, and that while he was recovering from his injuries he
28 was deported to Mexico. *Id.* While it is unclear, it appears that this incident may have occurred

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IT IS SO ORDERED.

Dated: October 10, 2019



ROBERT M. ILLMAN
United States Magistrate Judge