

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNARD ISALIAH LOVE,

Plaintiff,

v.

SALINAS VALLEY STATE PRISON,

Defendant.

Case No. [16-cv-01981-JD](#)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

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 its 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.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

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

LEGAL CLAIMS

Plaintiff argues that prison officials improperly classified him as a sex offender based on his commitment crime. The Due Process Clause protects against the deprivation of liberty without due process of law. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). In order to invoke the protection of the Due Process Clause, a plaintiff must first establish the existence of a liberty interest for which the protection is sought. *Id.* Liberty interests may arise from the Due Process Clause itself, or from an expectation or interest created by prison regulations. *Id.* The Due Process Clause itself does not confer on inmates a liberty interest in avoiding “more adverse conditions of confinement.” *Id.* The existence of a liberty interest created by prison regulations is determined by focusing on the nature of the deprivation. *Sandin v. Conner*, 515 U.S. 472, 481-84 (1995). Such liberty interests are “generally limited to freedom from restraint which . . . imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Id.* at 484; *Myron v. Terhune*, 476 F.3d 716, 718 (9th Cir. 2007).

Changes in conditions relating to classification and reclassification do not implicate the Due Process Clause itself. *See Hernandez v. Johnston*, 833 F.2d 1316, 1318 (9th Cir. 1987) (citing *Moody v. Dagget*, 429 U.S. 78, 88 n.9 (1976)) (no constitutional right to particular classification). Yet, the classification of an inmate as a sex offender may be the type of atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life that the

1 Supreme Court held created a protected liberty interest in *Sandin*. See *Neal v. Shimoda*, 131 F.3d
2 818, 827-30 (9th Cir. 1997). While such a liberty interest is not created merely by the requirement
3 that sex offenders participate in a specified treatment program, *see id.* at 830, in *Neal* the Ninth
4 Circuit found that “the stigmatizing consequences of the attachment of the ‘sex offender’ label
5 coupled with the subjection of the targeted inmate to a mandatory treatment program whose
6 successful completion is a precondition for parole eligibility create the kind of deprivations of
7 liberty that require procedural protections,” *id.* Under these circumstances, inmates are entitled to
8 procedural due process before being classified as sex offenders. *See id.* at 830-31 (inmates
9 entitled to procedural protections of *Wolff v. McDonnell*, 418 U.S. 539 (1974), including notice of
10 reasons for classification as sex offender and a hearing at which the inmate may call witnesses and
11 present documentary evidence in his defense).

12 Plaintiff states that an “R” suffix was improperly added to his custody designation which
13 denotes an underlying sex related offense. Plaintiff was charged as being an accomplice when
14 another defendant forced the victim to perform sex acts and assaulted her. Plaintiff pled guilty to
15 the assault but the sex related charges were dismissed. At a Unit Classification Committee
16 (“UCC”) hearing on September 17, 2014, the committee noted that plaintiff did not participate in
17 the sexual acts but added the “R” suffix because plaintiff had an opportunity to intercede in the
18 sexual assault but did not. Complaint at 9.

19 The complaint is dismissed with leave to amend. Plaintiff must provide more information
20 regarding any atypical and significant hardship associated with the “R” suffix and how the
21 procedural protections of *Wolff* were denied. Plaintiff must present specific allegations, simply
22 attaching exhibits is insufficient. Plaintiff may also wish to add as a defendant the Secretary of
23 CDCR, in order to obtain the injunctive relief he seek. This “R” suffix was added while in this
24 district, but plaintiff has since been transferred to a different prison in another district.

25 CONCLUSION

26 1. The complaint is **DISMISSED** with leave to amend. The amended complaint must
27 be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption
28 and civil case number used in this order and the words AMENDED COMPLAINT on the first


1 page. Because an amended complaint completely replaces the original complaint, plaintiff must
2 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
3 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to
4 amend within the designated time will result in the dismissal of this case.

5 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
6 Court informed of any change of address by filing a separate paper with the clerk headed "Notice
7 of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to
8 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
9 Civil Procedure 41(b).

10 **IT IS SO ORDERED.**

11 Dated: June 1, 2016

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JAMES DONATO
United States District Judge

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CERTIFICATE OF SERVICE

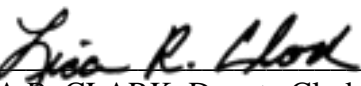
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 1, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kennard Isaiah Love ID: AA-7389
California Men's Colony State Prison
P.O. Box 8101
San Luis Obispo, CA 93409

Dated: June 1, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO