

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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHAWNCEY BLAKE,
Plaintiff,
v.
SANTA CLARA DEPARTMENT OF
CORRECTIONS; SERGEANT
GILLETTE; LIEUTENANT TAYLOR;
CAPTAIN SEPULVEDA,
Defendants.

No. C 14-3727 JSW (PR)
**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

INTRODUCTION

Plaintiff, an inmate at the Santa Clara County Jail, filed this pro se civil rights complaint under 42 U.S.C. § 1983 claiming that he was disciplined in retaliation for pursuing complaints in administrative grievances and in the courts. His application to proceed *in forma pauperis* is granted in a separate order. The complaint is dismissed with leave to amend.

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

1 may be granted, or seek monetary relief from a defendant who is immune from such
2 relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v.*
3 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

4 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement
5 of the claim showing that the pleader is entitled to relief." "Specific facts are not
6 necessary; the statement need only "give the defendant fair notice of what the claim
7 is and the grounds upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
8 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
9 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
10 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
11 recitation of the elements of a cause of action will not do. . . . Factual allegations must
12 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
13 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
14 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
15 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
16 699 (9th Cir. 1990).

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

21 **LEGAL CLAIMS**

22 Plaintiff alleges that he filed an administrative grievance with jail officials
23 requesting his medical records and a doctor's appointment. Defendant Gilette told him
24 not to contact "Internal Affairs Agent Linda Kowell" about these complaints. Plaintiff
25 then contacted Kowell, complaining that he had not received his records or a response to
26 his requests. Plaintiff was then disciplined. He claims that the discipline was in
27 retaliation for his grievance, his complaints to Kowell, and his attempts to present his
28 claims in the courts.

1 Plaintiff has not alleged any conduct by defendant Santa Clara County
2 Department of Corrections, which is a department of the municipality of Santa Clara
3 County. To impose liability under Section 1983 against a municipal entity such as Santa
4 Clara County for a violation of constitutional rights, a plaintiff must show: (1) that the
5 plaintiff possessed a constitutional right of which he or she was deprived; (2) that the
6 municipality had a policy; (3) that this policy amounts to deliberate indifference to the
7 plaintiff's constitutional rights; and (4) that the policy is the moving force behind the
8 constitutional violation. *Plumeau v. School Dist. #40 County of Yamhill*, 130 F.3d 432,
9 438 (9th Cir. 1997); *see Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978).
10 Plaintiff does not allege any policy by Santa Clara County that allegedly led to the
11 retaliation against him. Plaintiff will be given leave to file an amended complaint in
12 which he cures this deficiency, if he can do so in good faith.

13 Plaintiff has also not alleged any conduct by Defendants Sepulveda or Taylor, and
14 he has not alleged how Defendants Gilette and Kowell retaliated against him. Even at
15 the pleading stage, "[a] plaintiff must allege facts, not simply conclusions, that show that
16 an individual was personally involved in the deprivation of his civil rights." *Barren v.*
17 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998); *Leer v. Murphy*, 844 F.2d 628, 634
18 (9th Cir. 1988). In his amended complaint, Plaintiff must allege what actions each
19 individual took or failed to take that caused the retaliation or other constitutional
20 violation.

21 CONCLUSION


22 This case is DISMISSED WITH LEAVE TO AMEND.

23 Plaintiff shall file an amended complaint within **twenty eight (28) days from the**
24 **date this order is filed**. Plaintiff is advised to use the Court's complaint form. The
25 amended complaint **must** include the caption and civil case number used in this order
26 (No. C 14-3727 JSW (PR)) and the words "COURT-ORDERED FIRST AMENDED
27 COMPLAINT" on the first page. Because an amended complaint completely replaces
28 the original complaint, *see Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992),

1 Plaintiff may not incorporate material from the original by reference. Failure to amend
2 within the designated time and in accordance with this order will result in the dismissal
3 of this action.

4 IT IS SO ORDERED.

5 DATED: October 7, 2014

6 
7 _____
8 JEFFREY S. WHITE
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN DISTRICT OF CALIFORNIA
5

6
7 SHAWNCEY BLAKE,
8 Plaintiff,

Case Number: CV14-03727 JSW

CERTIFICATE OF SERVICE

9 v.


10 SANTA CLARA DEPT. OF CORRECTIONS
11 ET AL et al,
12 Defendant.
_____ /

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

15 That on October 7, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
17 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
18 receptacle located in the Clerk's office.

19 Shawncey Blake #14019586/DUJ72
20 Elmwood Complex Men's Facility
21 701 South Abel Street
22 Milpitas, CA 95035

Dated: October 7, 2014


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk