

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK A. BROWN,
Plaintiff,
v.
C. FLORES, et al.,
Defendants.

Case No. 18-CV-01578 LHK (PR)
**ORDER OF DISMISSAL WITH
PREJUDICE**

Plaintiff, a California state prisoner proceeding *pro se*, filed an amended civil rights complaint under 42 U.S.C. § 1983. For the reasons stated below, the court dismisses the amended complaint with prejudice.

DISCUSSION

A. Standard of review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that 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. *See* 28 U.S.C. § 1915A(b)(1),

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1 (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police*
2 *Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

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

7 B. Prior complaints

8 In plaintiff's original complaint, plaintiff alleged that on specific days in January,
9 February, and March 2017, plaintiff's cell flooded. Plaintiff alleged that he informed defendants
10 Correctional Officers C. Flores, A. Chavez, T. Grady, and T. Guterrez about the flooding. On
11 January 26, 2017, Flores refused plaintiff cleaning supplies. On February 10, 2017, Chavez
12 refused him cleaning supplies. On February 17, 2017, Chavez informed plaintiff that she would
13 assist him, but she failed to do so. On February 18, 2017, Grady did not allow plaintiff to exit the
14 cell or use cleaning materials. On March 5, 2017, Grady again denied plaintiff cleaning supplies.
15 On March 6, 2017, plaintiff slipped on the water and suffered a concussion after hitting his head
16 on a metal bunk. On March 12, 2017, Guterrez told plaintiff that Guterrez put in a work order to
17 fix the flooding.

18 The court dismissed the complaint with leave to amend. The court advised plaintiff that
19 plaintiff must provide non-conclusory facts from which it could be inferred that each defendant
20 actually knew that there was a substantial risk of serious harm to plaintiff yet failed to act. The
21 court warned plaintiff that the failure to file an amended complaint in accordance with its order
22 would result in the dismissal of this case.

23 A review of plaintiff's amended complaint shows that the factual allegations in the
24 amended complaint are exactly the same as those stated in plaintiff's original complaint.
25 Plaintiff's allegations do not provide any non-conclusory facts from which it can be inferred that

1 any defendant possessed a culpable state of mind sufficient to state an Eighth Amendment claim.
2 Plaintiff's amended complaint is dismissed for failure to state a claim. Even after the court
3 explained to the deficiencies in plaintiff's original complaint, plaintiff failed to cure those
4 deficiencies and instead filed a verbatim copy of his original complaint. Therefore, the court finds
5 that giving plaintiff further leave to amend would be futile, and this case is dismissed with
6 prejudice.

7 **CONCLUSION**

8 Plaintiff's amended complaint is **DISMISSED** with prejudice. The clerk shall terminate all
9 pending motions and close the case.

10 **IT IS SO ORDERED.**

11 DATED: _____

LUCY H. KOH
UNITED STATES DISTRICT JUDGE