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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

VERNE W. STEERS,
CDCR #v-09166,

Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Civil No. 07-2339 WQH (JMA)

**ORDER SUA SPONTE DISMISSING
PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR FAILING TO
STATE A CLAIM**

[Doc. No. 33]

I. Procedural History

On December 13, 2007, Verne W. Steers ("Plaintiff"), a former state inmate filed this civil rights action pursuant to 42 U.S.C. § 1983. As required by 28 U.S.C. §§ 1915(e)(2) & 1915A, the Court conducted a sua sponte screening of Plaintiff's Complaint and dismissed his Complaint for failing to state a claim. (*See* Feb. 29, 2008 Order at 5-6.) Plaintiff filed his First Amended Complaint on April 10, 2008. Again the Court conducted a sua sponte screening, dismissed some Defendants and directed the U.S. Marshal to effect service of the First Amended Complaint on the remaining Defendants. (*See* June 23, 2008 Order at 6-7.)

Over one year later, the Court issued an Order to Show Cause why the case should not be dismissed for failing to prosecute. (*See* July 17, 2009 Order at 1-2.) Plaintiff submitted a

1 response to the Court and the Court found that there was good cause to permit Plaintiff further
2 time to serve Defendants. Subsequently, Plaintiff filed a Motion to Amend his First Amended
3 Complaint. Plaintiff was granted leave to amend his First Amended Complaint and he was
4 directed to file his Second Amended Complaint no later than December 10, 2009. (*See* Nov. 19,
5 2009 Order at 2.) Although untimely, the Court permitted Plaintiff to file his Second Amended
6 Complaint (“SAC”) on January 25, 2010.

7 Upon review of Plaintiff’s Second Amended Complaint, the Court finds that it is
8 appropriate to conduct a sua sponte screening of Plaintiff’s Second Amended Complaint
9 pursuant to 28 U.S.C. § 1915(e)(2) (“[n]otwithstanding any filing fee, or any portion thereof, that
10 may have been paid, the court shall dismiss the case at any time if the court determines” that the
11 action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks
12 monetary relief against a defendant who is immune.).

13 **II. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2)**

14 **A. Standard**

15 The Prison Litigation Reform Act (“PLRA”) obligates the Court to review complaints
16 filed by all persons proceeding IFP. *See* 28 U.S.C. § 1915(e)(2). Under these provisions, the
17 Court must sua sponte dismiss any IFP or prisoner complaint, or any portion thereof, which is
18 frivolous, malicious, fails to state a claim, or which seeks damages from defendants who are
19 immune. *See* 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir.
20 2000) (en banc).

21 As currently pleaded, it is clear that Plaintiff’s Second Amended Complaint fails to state
22 a cognizable claim under 42 U.S.C. § 1983. Section 1983 imposes two essential proof
23 requirements upon a claimant: (1) that a person acting under color of state law committed the
24 conduct at issue, and (2) that the conduct deprived the claimant of some right, privilege, or
25 immunity protected by the Constitution or laws of the United States. *See* 42 U.S.C. § 1983;
26 *Nelson v. Campbell*, 541 U.S. 637, 124 S.Ct. 2117, 2122 (2004); *Haygood v. Younger*, 769 F.2d
27 1350, 1354 (9th Cir. 1985) (en banc).

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1 **B. Rule 8**

2 First, the Court finds that Plaintiff’s Second Amended Complaint fails to comply with
3 Rule 8. Specifically, Rule 8 provides that in order to state a claim for relief in a pleading it
4 must contain “a short and plain statement of the grounds for the court’s jurisdiction” and “a short
5 and plain statement of the claim showing that the pleader is entitled to relief.” FED.R.CIV.P.
6 8(a)(1) & (2). Here, Plaintiff sets forth a list of Defendants but fails to tie any of his factual
7 allegations to any one of the named Defendants in the body of the Second Amended Complaint.

8 **C. Eighth Amendment Failure to Protect Claims**

9 Plaintiff alleges that he was housed at the Richard J. Donovan Correctional Facility
10 (“RJD”) on May 4, 2005. (*See* SAC at 1.) On that date, Plaintiff claims that he was severely
11 beaten by unknown inmates. (*Id.* at 5.) While Plaintiff alleges that he was seriously injured, he
12 fails to allege any facts from which the Court could find that he has stated an Eighth Amendment
13 claim against any of the named Defendants. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

14 The Eighth Amendment’s prohibition against cruel and unusual punishment requires that
15 prison officials act reasonably in protecting inmates from violence suffered at the hands of other
16 prisoners. *Farmer*, 511 U.S. at 833; *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986).
17 However, to state a failure to protect claim, Plaintiff must allege facts sufficient to show that
18 Defendants were “deliberately indifferent,” that they were aware of, but nevertheless consciously
19 disregarded an excessive risk to his health or safety. *Farmer*, 511 U.S. at 834. If the official
20 is not alleged to have actual knowledge of a serious risk of harm, but is alleged to be aware of
21 facts from which the inference could be drawn that a substantial risk of serious harm exists, the
22 plaintiff must further allege that the official “also dr[ew] the inference.” *Id.* at 837; *Wilson v.*
23 *Seiter*, 501 U.S. 294, 303 (1991).

24 Here, while not entirely clear, it appears that Plaintiff claims that prison officials should
25 have known of an excessive risk to his health and safety based on the fact that he was “charged
26 with elderly abuse.” (Compl. at 5.) He further claims that he should not have been housed with
27 “violent criminals.” (*Id.* at 6.) However, Plaintiff admits that he does not know the identify of
28 the inmates that attacked him nor does he allege any facts by which the named Defendants

1 should have had knowledge that he would be attacked. Plaintiff fails to adequately allege with
2 any specificity how the *individual* Defendants would have known that there was a serious risk
3 of harm. Thus the Court finds that there are no allegations which would demonstrate that any
4 of the named Defendants “consciously disregarded an excessive risk to his health or safety.”
5 *Farmer*, 511 U.S. at 834; *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (to establish a
6 deprivation of a constitutional right by any particular individual, the plaintiff must allege that
7 the individual, in acting or failing to act, was the actual and proximate cause of his injury).

8 Thus, Plaintiff’s Eighth Amendment failure to protect claims are dismissed for failing to
9 state a claim upon which relief can be granted.

10 C. Respondeat Superior

11 Plaintiff’s claims against the named Defendants appear to seek to hold a majority of
12 Defendants liable in their supervisory capacity. However, there is no respondeat superior
13 liability under 42 U.S.C. § 1983. *Palmer v. Sanderson*, 9 F.3d 1433, 1437-38 (9th Cir. 1993).
14 Instead, “[t]he inquiry into causation must be individualized and focus on the duties and
15 responsibilities of each individual defendant whose acts or omissions are alleged to have caused
16 a constitutional deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo*
17 *v. Goode*, 423 U.S. 362, 370-71 (1976)). In order to avoid the respondeat superior bar, Plaintiff
18 must allege personal acts by each individual Defendant which have a direct causal connection
19 to the constitutional violation at issue. *See Sanders v. Kennedy*, 794 F.2d 478, 483 (9th Cir.
20 1986); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

21 Supervisory prison officials may only be held liable for the allegedly unconstitutional
22 violations of a subordinate if Plaintiff sets forth allegations which show: (1) how or to what
23 extent they personally participated in or directed a subordinate’s actions, and (2) in either acting
24 or failing to act, they were an actual and proximate cause of the deprivation of Plaintiff’s
25 constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). As currently pleaded,
26 however, Plaintiff’s Second Amended Complaint fails to set forth facts which might be liberally
27 construed to support an individualized constitutional claim against any of the named Defendants.

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1 Accordingly, the Court finds that Plaintiff's Second Amended Complaint fails to state a
2 section 1983 claim upon which relief may be granted, and is therefore subject to dismissal
3 pursuant to 28 U.S.C. § 1915(e)(2)(b). The Court will provide Plaintiff with an opportunity to
4 amend his pleading to cure the defects set forth above. Plaintiff is warned that if his amended
5 complaint fails to address the deficiencies of pleading noted above, it will be dismissed with
6 prejudice and without leave to amend.

7 **III. Conclusion and Order**

8 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

9 Plaintiff's Second Amended Complaint is **DISMISSED** without prejudice pursuant to
10 28 U.S.C. §§ 1915(e)(2). However, Plaintiff is **GRANTED** forty five (45) days leave from the
11 date this Order is Filed in which to file a Third Amended Complaint which cures all the
12 deficiencies of pleading noted above. Plaintiff's Third Amended Complaint must be complete
13 in itself without reference to the superseded pleading. *See* S.D. CAL. CIVLR. 15.1. Defendants
14 not *individually* named and all claims not re-alleged in the Amended Complaint will be
15 considered waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

16 DATED: February 8, 2010

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18 **WILLIAM Q. HAYES**
19 United States District Judge
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