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

ARMANDO TINAJERO,
CDCR No. AX-3761

Plaintiff,

v.

RAYMOND MADDEN; L. MARIN,

Defendants.

Case No. 16-cv-01342-BAS-BGS

**ORDER DISMISSING FIRST
AMENDED COMPLAINT FOR
FAILING TO STATE A CLAIM**

I. Procedural History

On June 2, 2016, Plaintiff Armando Tinajero, currently incarcerated at Centinela State Prison located in Imperial, California, and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (Doc. No. 1 (“Compl.”)). Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) when he filed his Complaint; instead, he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (Doc. No. 4). The Court granted Plaintiff’s Motion to Proceed IFP but concurrently dismissed the Complaint for failing to state a claim upon which relief could be granted. (Doc. No. 5 at 8.) Plaintiff was granted leave to file an amended pleading

1 and on August 22, 2016, Plaintiff filed his First Amended Complaint (“FAC”). (Doc.
2 No. 6.)

3 **II. Sua Sponte Screening per 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)**

4 **A. Standard of Review**

5 The Prison Litigation Reform Act (“PLRA”) obligates the Court to review
6 complaints filed by prisoners proceeding IFP “as soon as practicable after docketing.” 28
7 U.S.C. § 1915A(b); *see also* 28 U.S.C. § 1915(e)(2). Under these statutes, the Court must
8 sua sponte dismiss any complaint, or any portion of a complaint, which is frivolous,
9 malicious, fails to state a claim, or seeks damages from defendants who are immune. *See*
10 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *see also Rhodes v. Robinson*, 621 F.3d 1002,
11 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b); *Lopez v. Smith*, 203 F.3d 1122,
12 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)).

13 All complaints must contain “a short and plain statement of the claim showing that
14 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
15 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
16 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
17 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining whether
18 a complaint states a plausible claim for relief [is] . . . a context-specific task that requires
19 the reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere
20 possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; *see also*
21 *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

22 “When there are well-pleaded factual allegations, a court should assume their
23 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
24 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
25 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
26 allegations of material fact and must construe those facts in the light most favorable to
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1 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that
2 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

3 However, while the court “ha[s] an obligation where the petitioner is pro se,
4 particularly in civil rights cases, to construe the pleadings liberally and to afford the
5 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
6 2010) (citation omitted), it may not “supply essential elements of claims that were not
7 initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir.
8 1982). “Vague and conclusory allegations of official participation in civil rights
9 violations” are simply not “sufficient to withstand a motion to dismiss.” *Id.*

10 **B. Legal Standard for § 1983 Claims**

11 “Section 1983 creates a private right of action against individuals who, acting
12 under color of state law, violate federal constitutional or statutory rights.” *Devereaux v.*
13 *Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of
14 substantive rights, but merely provides a method for vindicating federal rights elsewhere
15 conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks
16 and citations omitted). “To establish § 1983 liability, a plaintiff must show both (1)
17 deprivation of a right secured by the Constitution and laws of the United States, and (2)
18 that the deprivation was committed by a person acting under color of state law.” *Tsao v.*
19 *Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

20 **C. Individual Liability and Causation**

21 As was the case with his original Complaint, Plaintiff’s FAC contains virtually no
22 factual allegations as to whom he claims violated his constitutional rights; nor does it
23 contain “further factual enhancement” that describes how, or to what extent, any
24 individual became aware of, or were actually aware of, alleged constitutional violations.
25 “Because vicarious liability is inapplicable to . . . §1983 suits, a plaintiff must plead that
26 each government-official defendant, through the official’s own individual actions, has
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1 violated the Constitution.” *Iqbal*, 556 U.S. at 676; *see also Jones v. Cmty.*
2 *Redevelopment Agency of City of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984)
3 (explaining that even pro se plaintiffs must “allege with at least some degree of
4 particularity overt acts which defendants engaged in” in order to state a claim).

5 “Causation is, of course, a required element of a § 1983 claim.” *Estate of Brooks*
6 *v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999). “The inquiry into causation must
7 be individualized and focus on the duties and responsibilities of each individual
8 defendant whose acts or omissions are alleged to have caused a constitutional
9 deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo v. Goode*,
10 423 U.S. 362, 370-71 (1976)).

11 Instead of setting forth specific factual allegations as it relates to each individual
12 defendant and the specific constitutional violation that is being raised, Plaintiff directs the
13 Court to review the exhibits attached to his FAC. (*See* FAC at 2-5.) Where Plaintiff
14 does refer to the individual Defendants, it is generally in broad terms. For example,
15 Plaintiff seeks to hold Defendant Madden liable for “failure to implement and carry out a
16 definitive policy directing subordinates as to how they should address problems when
17 dealing with prisoners.” (*Id.*, Ex. “A” at 1.) As for Defendant Marin, he claims Marin
18 “acted with evil motive and demonstrated reckless indifference to the constitutional rights
19 of this Plaintiff.” (*Id.* at 2.) While Plaintiff attaches a “statement” as an exhibit, it
20 appears that pages are missing. (*See* FAC, Ex. D, at 30.) In this “statement,” Plaintiff
21 describes a cell search by Defendant Marin but the statement is missing further factual
22 content. If Plaintiff chooses to amend his pleading, he must set forth all his factual
23 allegations in the body of the complaint itself.

24 These broad claims without sufficient factual allegations are insufficient to state a
25 section 1983 claim. *See Iqbal*, 662 U.S. at 678 (noting that Fed. R. Civ. P. 8 “demands
26 more than an unadorned, the-defendant-unlawfully-harmed-me accusation,” and that “[t]o
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1 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
2 as true, to ‘state a claim for relief that is plausible on its face.’”) (quoting *Twombly*, 550
3 U.S. at 555, 570).

4 **D. Fourteenth Amendment Claims**

5 Based on the exhibits attached to Plaintiff’s FAC, it appears that he is challenging
6 a disciplinary conviction. The Due Process Clause protects prisoners against deprivation
7 or restraint of “a protected liberty interest” and “atypical and significant hardship on the
8 inmate in relation to the ordinary incidents of prison life.” *Ramirez v. Galaza*, 334 F.3d
9 850, 860 (9th Cir. 2003) (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995) (internal
10 quotation marks omitted)). Although the level of the hardship must be determined on a
11 case-by-case basis, courts look to:

12 1) whether the challenged condition ‘mirrored those conditions imposed upon
13 inmates in administrative segregation and protective custody,’ and thus
14 comported with the prison’s discretionary authority; 2) the duration of the
15 condition, and the degree of restraint imposed; and 3) whether the state’s
action will invariably affect the duration of the prisoner’s sentence.

16 *Ramirez*, 334 F.3d at 861 (quoting *Sandin*, 515 U.S. at 486-87). Only if an inmate has
17 alleged facts sufficient to show a protected liberty interest does the court next consider
18 “whether the procedures used to deprive that liberty satisfied Due Process.” *Ramirez*, 334
19 F.3d at 860.

20 As currently pleaded, Plaintiff’s FAC fails to allege facts which show that the
21 disciplinary punishment he faced as a result of Defendant’s actions subjected him to any
22 “atypical and significant hardship in relation to the ordinary incidents of prison life.” *Id.*;
23 *Sandin*, 515 U.S. at 584. Plaintiff does not compare the conditions of his confinement
24 before or after his disciplinary conviction. Nor does he allege the duration of his term of
25 discipline, or the degree of restraint it imposed. *Ramirez*, 334 F.3d at 861 (quoting
26 *Sandin*, 515 U.S. at 486-87).

1 Moreover, his pleading contains no factual content that would allow the court to
2 draw the reasonable inference that Defendants’ actions “presented a dramatic departure
3 from the basic conditions of [Plaintiff’s] sentence,” or caused him to suffer atypical or
4 significant hardship. *Sandin*, 515 U.S. at 584-85; *see also Iqbal*, 556 U.S. at 678; *Keenan*
5 *v. Hall*, 83 F.3d 1083, 1088-89 (9th Cir. 1996), *amended by* 135 F.3d 1318 (9th Cir.
6 1998).

7 Finally, to the extent that Plaintiff is challenging the prison’s administrative
8 grievance process, he has failed to state a claim. While the Fourteenth Amendment
9 provides that “[n]o state shall . . . deprive any person of life, liberty, or property, without
10 due process of law,” U.S. Const. amend. XIV, § 1, “[t]he requirements of procedural due
11 process apply only to the deprivation of interests encompassed by the Fourteenth
12 Amendment’s protection of liberty and property.” *Board of Regents v. Roth*, 408 U.S.
13 564, 569 (1972). State statutes and prison regulations may grant prisoners liberty or
14 property interests sufficient to invoke due process protection. *Meachum v. Fano*, 427
15 U.S. 215, 223-27 (1976). However, to state a procedural due process claim, Plaintiff must
16 allege: “(1) a liberty or property interest protected by the Constitution; (2) a deprivation
17 of the interest by the government; [and] (3) lack of process.” *Wright v. Riveland*, 219
18 F.3d 905, 913 (9th Cir. 2000).

19 The Ninth Circuit has held that inmates have no protected property interest in an
20 inmate grievance procedure arising directly from the Due Process Clause. *See Ramirez*,
21 334 F.3d at 869 (“[I]nmates lack a separate constitutional entitlement to a specific prison
22 grievance procedure.”) (citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988)). Even
23 the non-existence of, or the failure of prison officials to properly implement, an
24 administrative appeals process within the prison system does not raise constitutional
25 concerns. *Mann*, 855 F.2d at 640.

26 Here, Plaintiff has failed to plead any facts sufficient to show that Defendants
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1 deprived him of a protected liberty interest by allegedly failing to respond to any
2 particular prison grievance in a satisfactory manner.

3 Accordingly, for the reasons set forth above, Plaintiff's FAC requires dismissal
4 pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). *See Lopez*, 203 F.3d at 1126-27;
5 *Rhodes*, 621 F.3d at 1004.

6 **III. Conclusion and Order**

7 For the foregoing reasons, the Court:

8 1. **DISMISSES** Plaintiff's FAC for failing to state a claim upon which relief
9 may be granted pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and **GRANTS** him
10 forty-five (45) days leave from the date of this Order in which to file a Second Amended
11 Complaint which cures all the deficiencies of pleading noted. Plaintiff's Second
12 Amended Complaint must be complete in itself without reference to his original pleading.
13 Defendants not named and any claims not re-alleged in the Second Amended Complaint
14 will be considered waived. *See* CivLR 15.1; *Hal Roach Studios, Inc. v. Richard Feiner &*
15 *Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the
16 original.”); *see also Lacey v. Maricopa Cty.*, 693 F.3d 896, 928 (9th Cir. 2012) (noting
17 that claims dismissed with leave to amend which are not re-alleged in an amended
18 pleading may be “considered waived if not repled.”).

19 2. **DIRECTS** the Clerk of Court to mail to Plaintiff, together with this Order, a
20 blank copy of the Court's form “Complaint under the Civil Rights Act, 42 U.S.C.
21 § 1983” for his use in amending.

22 3. Plaintiff is advised that he will not be permitted to amend his complaint
23 indefinitely. Plaintiff's continued failure to state a plausible claim for relief may result in
24 dismissal of his case without leave to amend.

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2 **IT IS SO ORDERED.**

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4 **DATED: November 2, 2016**

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Hon. Cynthia Bashant
United States District Judge

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