



**(PC) Hubbard v. Weaver et al**

2014 | Cited 0 times | E.D. California | January 29, 2014

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ZANE HUBBARD,

Plaintiff, v. B. J. WEAVER, et al.,

Defendants.

Case No. 1:13-cv-01755-MJS ORDER COMPLAINT, WITH LEAVE TO AMEND, FOR FAILURE TO STATE A CLAIM ECF No. 1 AMENDED COMPLAINT DUE WITHIN THIRTY DAYS

On October 23, 2013, Zane Hubbard ( and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983.

(Compl., ECF No. 1.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 8.) 1

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1 Plaintiff consented to Magistrate Judge jurisdiction (ECF No. 8), and then filed a notice that he declined such jurisdiction (ECF No. 9). Once a civil case is referred to a Magistrate Judge under 28 U.S.C. § 636(c), the reference can be withdrawn by the Court motion, o Dixon v. Ylst, 990 F.2d 478, 480 (9th Cir. 1993); 28 U.S.C. § 636(c); Fed. R. Civ. P. 73(b). Plaintiff has failed to show extraordinary circumstances for withdrawing Magistrate Judge jurisdiction. I. SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims t claim upon which relief may be granted, or that seek monetary relief from a defendant

filing fee, or any portion thereof, that may have been paid, the court shall dismiss the

case at any time if the court determines that . . . the action or appeal . . . fails to state a



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A complaint must be supported by *Ashcroft v. Iqbal*, 556 U.S.

662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

Facial plausibility demands more than the mere possibility that a defendant committed misconduct and, while factual allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678. II.

Plaintiff is currently housed at the California State Prison in Corcoran, California - , where the events at issue in his Complaint occurred. Plaintiff names the following individuals as defendants: 1) B. J. Weaver, Facility 4B Captain at CSP-COR, and 2) A. Pacillas, Correctional Counselor at Facility 4B at CSP-COR. Plaintiff alleges that these Defendants violated his due process rights under the Fourteenth Amendment and his rights under the First, Fourth, Fifth, and Eighth Amendments. Plaintiff also alleges that Defendants violated rights he was entitled to under California Department of Corrections and Rehabilitation policies.

may be summarized as follows: behavior that could lead to violence and another for destruction of property. (Compl. at

6.) deprived of his due process. (Id. at 7.) Plaintiff was housed in a cell with an unsanitary

mattress and other inadequate conditions even though he has Valley Fever. (Id. at 7-8.) Plaintiff was not provided with a cup for water and was forced to eat off of paper plates for several days. (Id. Id.) Plaintiff was also given an improper classification. (Id.)

Plaintiff asks to be transferred to Pelican Bay and for \$50,000 in compensatory damages. III.  
ANALYSIS

A. 42 U.S.C. § 1983 Claims , 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). §

1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights conferred elsewhere. *Graham v. Connor*, 490 U.S. 386, 393- 94 (1989).

To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987). /// ///

B. Linkage Under § 1983, Plaintiff must demonstrate that each named defendant personally participated in the deprivation of his rights. *Ashcroft v. Iqbal*, 556 U.S. 662, 676-77 (2009); *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1020-21 (9th Cir. 2010); *Ewing v. City of Stockton*, 588 F.3d 1218,



## (PC) Hubbard v. Weaver et al

2014 | Cited 0 times | E.D. California | January 29, 2014

1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Liability may not be imposed on supervisory personnel under the theory of respondeat superior, as each defendant is only liable for his or her own misconduct. Iqbal, 556 U.S. at 676-77; Ewing, 588 F.3d at 1235. Supervisors may violations and failed tTaylor v. List, 880 F.2d 1040, 1045 (9th

Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011); Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark County School Board of Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997).

Plaintiff has not tied any Defendant to any particular claim or allegation. In order to state a cognizable claim, Plaintiff must explain how each Defendant personally participated in a deprivation of his rights. Plaintiff will be permitted the opportunity to file an amended complaint clarifying the factual bases for liability against each named Defendant.

lengthy, Fed. R. Civ. P. 8(a)(2), but it must specify what each defendant did or did not do that led to the violation suffice. Iqbal, 556 U.S. at 676-677. The amended complaint should focus on providing

the Court with information as to who violated his rights, how and when they violated his rights, what circumstances led up to the violations, what explanation was given for the action which Plaintiff claims constituted the violations, and why the acts complained of rise to the level of a constitutional violation under the standards provided below. ///

C. It appears Plaintiff wishes to allege claims under the First, Fourth, Fifth, and Eighth Amendments and under the due process clause of the Fourteenth Amendment. Plaintiff also alleges Defendants violated rights under California Department of Corrections and Rehabilitation policies. The Court is unable to determine whether Plaintiff has stated a cognizable claim because he does not provide sufficient factual detail as to how and any one individual violated his rights. The Court will set out below the legal standards for alleging claims such as those Plaintiff indicates he wants to assert.

1. First Amendment Retaliation Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) beca Rhodes v. Robinson, 408

F.3d 559, 567-68 (9th Cir. 2005).

The second element of a prisoner retaliation claim focuses on causation and motive. See Brodheim v. Cry, 584 F.3d 1262, 1271 (9th Cir. 2009). A plaintiff must d the Id. (quoting , 874 F.2d 1310, 1314 (9th Cir. 1989). Although it can be difficult to establish the motive or intent of the defendant, a plaintiff may rely on circumstantial evidence. Bruce v. Ylst, 351 F.3d 1283, 1289 (9th Cir. 2003) (finding that a prisoner established a triable issue of fact regarding statements); Hines v. Gomez, 108 F.3d 265, 267-68 (9th Cir. 1997); Pratt v. Rowland,



## (PC) Hubbard v. Weaver et al

2014 | Cited 0 times | E.D. California | January 29, 2014

In terms of the third prong, filing a grievance is a protected action under the First Amendment. *Valandingham v. Bojorquez*, 866 F.2d 1135, 1138 (9th Cir. 1989). Pursuing a civil rights legal action is also protected under the First Amendment. *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir. 1985).

to allow a defendant to escape liability for a First Amendment violation merely because an unusually *Mendocino Env'tl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir. 1999). The correct inquiry is to from future First Amendment activities. *Rhodes*, 408 F.3d at 568-69 (citing *Mendocino*

*Env'tl. Ctr.*, 192 F.3d at 1300).

With respect to the *Rizzo*, 778 F.2d

at 532. 2. Fourth Amendment

*United States v. Jacobsen*, 466 U.S. at 113. The United States Supreme Court has

*Hudson v. Palmer* free to seize from cells any articles which, in their view, disserve legitimate institutional

*Id.* at 528 n.8.

3. Fifth Amendment *Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008).

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4. Eighth Amendment A] prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). Prison officials are required to take reasonable measures to guarantee the safety of inmates and officials have a duty to protect prisoners from violence at the hands of other prisoners. *Farmer*, 511 U.S. at 832 33; *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998). An inmate has no constitutional right, however, to enjoy a particular security classification or housing. See *Meachum v. Fano*, 427 U.S. 215, 224 25 (1976) (no liberty interest protected by the Due Process Clause is implicated in a prison's reclassification and transfer decisions); see also *Myron v. Terhune* harassment or abuse . . *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987) (quoting *Collins v. Cundy*,

603 F.2d 825 (10th Cir. 1979)). Rather, to state a claim for threats to safety, an inmate must allege facts to support that he was incarcerated under conditions posing a substantial risk of harm and *Farmer*, 511 U.S. at 834; *Frost*, 152 F.3d at 1128; *Redman v. County of Los Angeles*, 942 F.2d 1435, 1443 (9th Cir. 1991) (en banc). To adequately allege deliberate indifference, a plaintiff must set forth facts to



## (PC) Hubbard v. Weaver et al

2014 | Cited 0 times | E.D. California | January 29, 2014

support that a defendant knew of, but disregarded, an excessive risk to inmate safety. Farmer aware of facts from which the inference could be drawn that a substantial risk of serious

Farmer, 511 U.S. at 837; Frost, 152 F.3d at 1128; Redman, 942 F.2d at 1442.

5. Fourteenth Amendment The Due Process Clause protects Plaintiff against the deprivation of liberty without the procedural protections to which he is entitled under the law. *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). To state a claim, Plaintiff must first identify the interest at stake. *Wilkinson*, 545 U.S. at 221. Liberty interests may arise from the Due Process Clause or from state law. *Id.* The Due Process Clause itself does not confer on inmates a liberty interest in avoiding more adverse conditions of confinement, *id.* at 221 22 (citations and quotation marks omitted), and under state law, the existence of a liberty interest created by prison regulations is determined by focusing on the nature of the condition of confinement at issue, *id.* at 222 23 (citing *Sandin v. Conner*, 515 U.S. 472, 481 84 (1995)) (quotation marks omitted). Liberty interests created by prison regulations 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. *Wilkinson*, 545 U.S. at 221 (citing *Sandin*, 515 U.S. at 484) (quotation marks omitted); *Myron v. Terhune*, 476 F.3d 716, 718 (9th Cir. 2007). 6. Regulations

The violation of state tort law, state regulations, rules and policies of the California Department of Corrections and Rehabilitation, or other state law is not sufficient to state a claim for relief under § 1983. To state a claim under § 1983, there must be a deprivation of federal constitutional or statutory rights. See *Paul v. Davis*, 424 U.S. 693 (1976). Although the court may exercise supplemental jurisdiction over state law claims, plaintiff must first have a cognizable claim for relief under federal law. See 28 U.S.C. § 1367. IV. CONCLUSION AND ORDER

§ 1983. The Court will provide Plaintiff with an opportunity to amend to cure the deficiencies in his claim. *Lopez v. Smith*, 203 F.3d at 1122, 1130 (9th Cir. 2000); *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended complaint. *George v. Smith*,

nded complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what each named defendant did that led to the deprivation of Plaintiff=s constitutional rights, *Iqbal*, 556 U.S. 676- allegations must be Twombly, 550 U.S. at 555 (citations omitted).

Finally, an amended complaint supersedes the prior complaint, *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567

Accordingly, it is HEREBY ORDERED that: 1. 2. Plaintiff's October 23, 2013, complaint is dismissed for failure to state a claim upon which relief may be granted under § 1983;

3. Within thirty (30) days from the date of service of this order, Plaintiff shall file an amended



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2014 | Cited 0 times | E.D. California | January 29, 2014

complaint; and

4. If Plaintiff fails to file an amended complaint in compliance with this order, this action will be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Dated: January 29, 2014 /s/ Michael J. Seng UNITED STATES MAGISTRATE JUDGE

