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

JAMES EVANS,

Plaintiff,

No. 2:09-cv-0292-JFM (PC)

vs.

FELKER, et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. This matter is before the court on defendants’ motion to dismiss several claims raised in plaintiff’s third amended complaint pursuant to Fed. R. Civ. P. 12(b)(6) and on plaintiff’s motion for temporary restraining order and/or preliminary injunctive relief.

I. Defendants’ Motion to Dismiss

This action is proceeding on claims against defendants Singh, Telford, Numering, Terrazas, Fleishman, McDonald and Felker raised in plaintiff’s third amended complaint, filed August 20, 2009. Defendants have moved to dismiss plaintiff’s claims that his transfer to High Desert State Prison (High Desert) and his placement in administrative segregation violated his constitutional rights. In addition, defendants McDonald and Felker seek dismissal on the ground that plaintiff has not alleged any causal connection between them and the events complained of.

1 Rule 12(b)(6) of the Federal Rules of Civil Procedures provides for motions to  
2 dismiss for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).  
3 In considering a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the court must accept as  
4 true the allegations of the complaint in question, Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197  
5 (2007), and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes,  
6 416 U.S. 232, 236 (1974). In order to survive dismissal for failure to state a claim a complaint  
7 must contain more than “a formulaic recitation of the elements of a cause of action;” it must  
8 contain factual allegations sufficient “to raise a right to relief above the speculative level.” Bell  
9 Atlantic Corp. v. Twombly, 550 U.S. 544, 554 (2007). However, “[s]pecific facts are not  
10 necessary; the statement [of facts] need only “give the defendant fair notice of what the . . .  
11 claim is and the grounds upon which it rests.”” Erickson, 551 U.S. 89, 127 S.Ct. at 2200  
12 (quoting Bell Atlantic at 554, in turn quoting Conley v. Gibson, 355 U.S. 41, 47 (1957).

13 Plaintiff’s third amended complaint contains the following allegations. In  
14 November 2005, plaintiff was sentenced to a term of seven years and eight months in state prison  
15 following his conviction on charges of assault with a deadly weapon with great bodily injury and  
16 violation of probation. On January 18, 2006, plaintiff was received at California State Prison-  
17 Solano (CSP-Solano). In July 2006, plaintiff was placed in administrative segregation for  
18 possession of a knife. On May 30, 2007, plaintiff’s sentence was vacated by the California Court  
19 of Appeal for the Sixth Appellate District pursuant to a decision of the United States Supreme  
20 Court and the matter was remanded for resentencing. On June 7, 2007, plaintiff was taken before  
21 the institutional classification committee. Defendants Singh and Telford were members of that  
22 committee. Defendant Telford recommended that plaintiff be transferred to High Desert.  
23 Plaintiff requested transfer to the Santa Clara County Jail pending resentencing. Plaintiff’s  
24 request was denied.

25 On October 3, 2007, defendant Numering directed defendant Terrazas to extract  
26 plaintiff from his cell with the use of force. Gas was used, followed by a brutal beating of

1 plaintiff by seven prison guards. Plaintiff was on suicide watch for ten days and then returned to  
2 administrative segregation. Defendant Fleishman told plaintiff that he had been extracted from  
3 his cell and beaten because he refused to accept the transfer to High Desert. On November 8,  
4 2007, plaintiff was lured from his cell by false statements that he was being transferred to the  
5 Santa Clark County Jail. Once plaintiff was in handcuffs, defendant Numering directed  
6 defendant Terrazas to put a mask over plaintiff's face. Thereafter, plaintiff was transported to  
7 High Desert. Plaintiff believes that defendants Felker and McDonald, the current and former  
8 Wardens of High Desert respectively, colluded with officials at CSP-Solano in plaintiff's  
9 transfer. On July 3, 2008, plaintiff was against placed in administrative segregation. Plaintiff  
10 believes the underlying incident was designed to punish plaintiff in retaliation for his attempts to  
11 vindicate his rights to due process and to access the courts.

12           Plaintiff claims that the transfer to High Desert violated his rights under the  
13 Eighth Amendment and to due process, that the use of excessive force violated his rights under  
14 the Eighth Amendment, and that the conspiracy to place plaintiff in administrative segregation  
15 violated California Penal Code § 1242 and plaintiff's rights under the Eighth Amendment.

16           Defendants seek dismissal of plaintiff's claims arising from his transfer to High  
17 Desert and his placement in administrative segregation on the grounds that plaintiff has no  
18 protected liberty interest in freedom from transfer to another prison and that placement in  
19 administrative segregation does not constitute cruel and unusual punishment.

20           Defendants are correct that plaintiff has no constitutional right to be housed at a  
21 specific prison. See Meachum v. Fano, 427 U.S. 215 (1976). The gravamen of plaintiff's claim,  
22 however, is that during the period following issuance of the order of the California Court of  
23 Appeal for the Sixth Appellate District vacating his sentence and remanding the matter for  
24 resentencing, the California Department of Corrections and Rehabilitation did not have  
25 jurisdiction over him and for that reason lacked authority to transfer him to another state prison.  
26 Plaintiff's claim rests on an erroneous premise; the state court of appeal vacated only his

1 sentence, not his underlying conviction, and remanded the matter for resentencing. See People v.  
2 Evans, No. H029616 (May 30, 2007), slip op. at 14-17.<sup>1</sup> Consequently, plaintiff remained in the  
3 lawful custody of the Director of the California Department of Corrections, see People v.  
4 Buckhalter, 26 Cal. 4th 20, 23 (2001), and defendants retained jurisdiction and authority to  
5 transfer plaintiff to another prison facility. For this reason, plaintiff's claim that his  
6 constitutional rights were violated by his transfer to High Desert should be dismissed.

7 Defendants seek dismissal of plaintiff's claim that his rights under the Eighth  
8 Amendment were violated by the alleged retaliatory conspiracy that led to his placement in  
9 administrative segregation. Defendants contend that the allegations of the complaint show that  
10 plaintiff was placed in administrative segregation for his own safety and that such allegations  
11 cannot support a cognizable Eighth Amendment claim because there can be no showing of  
12 deliberate indifference under such circumstances. Defendants also contend that plaintiff has  
13 failed to allege any prejudice as a result of the placement in administrative segregation.

14 The allegations of paragraph 25 of the third amended complaint, cited by  
15 defendants in their motion to dismiss, are as follows:

16 On the 31st day of the month of July, year 2008 an incident  
17 occurred in which plaintiff was placed into Ad-Seg as a result.  
18 Plaintiff believes this was designed to happen by the defendants to  
punish plaintiff in retaliation for plaintiff attempting to pursue his  
right to due process and equal access to the courts.

19 There are no allegations in the third amended complaint which suggest that the challenged  
20 placement in administrative segregation was for plaintiff's safety. Defendants have not  
21 demonstrated that this retaliation claim must be dismissed.

22 Finally, defendants contend that the allegations against defendants Felker and  
23 McDonald are insufficient to suggest their personal involvement in the events complained of.  
24 The sole allegations against these two defendants are as follows:

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26 <sup>1</sup> A copy of this decision is attached as an exhibit to plaintiff's opposition to defendants'  
motion to dismiss, filed January 28, 2010.

1 Upon information and belief plaintiff was placed at HDSP with the  
2 defendants having prior knowledge that plaintiff would have  
3 problems and end up in Ad-Seg for a lengthy period of time where  
4 his access to the courts would be hindered. Furthermore plaintiff  
5 believes that the receiving administration at HDSP defendants  
6 Warden Felker and then Warden McDonald respectively, knew of  
7 plaintiff's situation and acted in collusion with the defendants at  
8 CSP-Solano.

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10 Third Amended Complaint, at 8. The Civil Rights Act under which this action was filed  
11 provides as follows:

12 Every person who, under color of [state law] . . . subjects, or causes  
13 to be subjected, any citizen of the United States . . . to the  
14 deprivation of any rights, privileges, or immunities secured by the  
15 Constitution . . . shall be liable to the party injured in an action at  
16 law, suit in equity, or other proper proceeding for redress.

17 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
18 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
19 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
20 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the  
21 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
22 omits to perform an act which he is legally required to do that causes the deprivation of which  
23 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

24 Moreover, supervisory personnel are generally not liable under § 1983 for the  
25 actions of their employees under a theory of respondeat superior and, therefore, when a named  
26 defendant holds a supervisory position, the causal link between him and the claimed  
constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862  
(9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.  
941 (1979). Vague and conclusory allegations concerning the involvement of official personnel  
in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th  
Cir. 1982). Upon review, the court finds that the allegations against defendants Felker and  
McDonald are too vague and conclusory to state a cognizable claim for relief against either of

1 these defendants. For that reason, defendants' motion to dismiss should be granted as to  
2 defendants Felker and McDonald.

3 II. Plaintiff's Motion for Temporary Restraining Order

4 On January 28, 2010, plaintiff filed a motion for temporary restraining order  
5 and/or preliminary injunction. Plaintiff seeks injunctive relief from his placement in  
6 administrative segregation, which he alleges has been continuous since July 31, 2008, on the  
7 ground that defendants lacked jurisdiction over him at the time he was placed in administrative  
8 segregation.

9 The principal purpose of preliminary injunctive relief is to preserve the court's  
10 power to render a meaningful decision after a trial on the merits. See C. Wright & A. Miller, 11  
11 Federal Practice and Procedure, §2947 (1973). In addition to demonstrating that he will suffer  
12 irreparable harm if the court fails to grant the preliminary injunction, plaintiff must show a "fair  
13 chance of success on the merits" of his claim. Sports Form, Inc. v. United Press International,  
14 Inc., 686 F.2d 750, 754 (9th Cir. 1982) (quoting Benda v. Grand Lodge of International  
15 Association of Machinists and Aerospace Workers, 584 F.2d 308, 315 (9th Cir. 1979)). Implicit  
16 in this required showing is that the relief awarded is only temporary and there will be a full  
17 hearing on the merits of the claims raised in the injunction when the action is brought to trial.

18 For the reasons set forth in section I, supra, plaintiff's claim that defendants did  
19 not have jurisdiction over him from the time his sentence was vacated until he was resentenced is  
20 without merit. Accordingly, he cannot prevail on the merits of the claim underlying his motion  
21 for temporary restraining order and the motion should be denied.

22 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the  
23 Court is directed to assign this action to a United States District Judge; and

24 IT IS HEREBY RECOMMENDED that:

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1           1. Defendants' December 3, 2009 motion to dismiss be granted as to plaintiff's  
2 claim that his constitutional rights were violated by his transfer to High Desert State Prison and  
3 as to his claim against defendants Felker and McDonald and denied in all other respects;

4           2. Defendants be directed to answer the remaining claims in plaintiff's third  
5 amended complaint within ten days from the date of any order by the district court adopting these  
6 findings and recommendations; and

7           3. Plaintiff's January 28, 2010 motion for temporary restraining order and/or  
8 preliminary injunction be denied.

9           These findings and recommendations are submitted to the United States District  
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
11 days after being served with these findings and recommendations, any party may file written  
12 objections with the court and serve a copy on all parties. Such a document should be captioned  
13 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
14 objections shall be filed and served within fourteen days after service of the objections. The  
15 parties are advised that failure to file objections within the specified time may waive the right to  
16 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: March 29, 2010.

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20 UNITED STATES MAGISTRATE JUDGE

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