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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MARTIN ROSS MIALE,

CASE NO. 1:06-cv-01483-AWI-YNP PC

Plaintiff,

ORDER REQUIRING PLAINTIFF EITHER TO  
FILE AMENDED COMPLAINT OR TO NOTIFY  
COURT OF WILLINGNESS TO PROCEED  
ONLY ON CLAIMS FOUND TO BE

v.

COGNIZABLE

TUOLUMNE COUNTY SHERIFF'S  
DEPARTMENT, et al.,

(Doc. 1)

Defendants.

RESPONSE DUE WITHIN 30 DAYS

\_\_\_\_\_ /

Plaintiff Martin Ross Miale ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is in the custody of the California Department of Corrections and Rehabilitation. However, the events in Plaintiff's complaint appear to have taken place before his incarceration. Plaintiff is suing under section 1983 for the violation of his constitutional rights. Plaintiff also claims that Defendants violated the Posse Comitatus Act (18 U.S.C. § 1385). Plaintiff names Richard Rogers, Lee Stanford, Craig Davis, Todd Blankenship, George Ruckman, Jim Earl, Dan Bressler, Lt. Ditbetter, Zack Gordon, Jeff Gimpler, Jim Mele, A. J. Ford, P. T. Jones, Ken Austin, Tom Shepard, Bernie Roberts, and Donald I. Segerstrom as defendants. For the reasons set forth below, Plaintiff is ordered either to notify the Court of his willingness to proceed only on the claims found to be cognizable in this order, or to file an amended complaint.

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1 **I. Screening Requirement**

2 The Court is required to screen complaints brought by prisoners seeking relief against a  
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
4 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
5 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
6 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
7 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
8 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
9 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

10 In determining whether a complaint fails to state a claim, the Court uses the same pleading  
11 standard used under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must  
12 contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.  
13 R. Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not require ‘detailed factual  
14 allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me  
15 accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v.  
16 Twombly, 550 U.S. 544, 555 (2007)). “[A] complaint must contain sufficient factual matter,  
17 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id. (quoting Twombly, 550  
18 U.S. at 570). “[A] complaint [that] pleads facts that are ‘merely consistent with’ a defendant’s  
19 liability . . . ‘stops short of the line between possibility and plausibility of entitlement to relief.’” Id.  
20 (quoting Twombly, 550 U.S. at 557). Further, although a court must accept as true all factual  
21 allegations contained in a complaint, a court need not accept a plaintiff’s legal conclusions as true.  
22 Id. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
23 statements, do not suffice.” Id. (quoting Twombly, 550 U.S. at 555).

24 **II. Background**

25 Although Plaintiff is currently a prisoner in the custody of the California Department of  
26 Corrections and Rehabilitation, Plaintiff’s complaint appears to describe events that occurred before  
27 Plaintiff was incarcerated. Plaintiff alleges that he was retaliated against by employees of the  
28 Tuolumne County Sheriff’s Department. Plaintiff alleges that Bruce Wood Medina was killed by

1 employees of the Tuolumne County Sheriff's Department and a monument was erected by his family  
2 and friends stating that his death was caused by "cowards" of the Tuolumne County Sheriff's  
3 Department. The monument reads:

4           This Monument is Dedicated to  
5           Bruce Wood Medina  
6           Born Dec. 31, 46  
7           Killed Feb. 07, 91  
8           On this Location, While Unarmed &  
9           Standing on His Own Property  
10          Bruce Wood Medina was Shot & Killed  
11          by the Coward, Scott Mcfee and/or  
12          other Cowards of the Tuolumne  
13          County Sherriff[sic] Department  
14          This Crime was then White-Washed  
15          by the California Deptment[sic]  
16          of Justice

17 (Compl. 23.) The monument stands on Plaintiff's property. Plaintiff alleges that he is frequently  
18 pulled over by officers from the Sheriff's Department who urge Plaintiff to remove the monument  
19 from his property.

20           Plaintiff alleges that sometime in February 2005, Defendant Davis concocted a story that  
21 Plaintiff was armed with automatic weapons and explosives, and was dealing drugs throughout the  
22 foothills. On March 4, 2005, a search warrant was issued against Plaintiff. On March 14, 2005, the  
23 Tuolumne County Sheriff's Department "activated" the California National Guard. Members of the  
24 California National Guard dressed in ghillie suits, armed themselves with sniper rifles and machine  
25 guns, and positioned themselves around Plaintiff's property. These California National Guard  
26 members, along with local law enforcement personnel, executed the search warrant around 6:30 a.m.  
27 on Plaintiff's property. Plaintiff alleges that there were over 30 armed men "running amuck" on his  
28 property.

          Plaintiff alleges that the armed military and law enforcement officials surrounded Plaintiff's  
puppy yelling incoherently. Plaintiff, who had been previously injured in a car wreck, limped  
toward the armed men waiving his arms and yelling "Don't shoot, don't shoot, he is just a puppy."  
The armed men then turned their guns toward Plaintiff and continued screaming incoherently. A  
California National Guard armored personnel carrier loaded with additional men then "came flying  
into" Plaintiff's property, nearly hitting Plaintiff. A military helicopter also dropped from the sky,

1 “armed with what looked to be a 50 caliber machine gun” pointing at Plaintiff. Plaintiff attempted  
2 to get down on the ground, but had difficulty due to injuries in his leg. One of the California  
3 National Guardsmen approached Plaintiff, drove Plaintiff face first into the concrete, and twisted  
4 Plaintiff’s arm behind his head, causing Plaintiff’s shoulder to crack. Plaintiff also felt another  
5 person stomping on his legs. Another person climbed on Plaintiff’s back, told Plaintiff to calm  
6 down, and popped his shoulder back into place.

7 Plaintiff alleges that he was then handcuffed and placed on a rock while other men ran  
8 around on his property waving their machine guns yelling incoherently, unnecessarily kicked down  
9 doors that were unlocked, and destroyed Plaintiff’s property. Plaintiff was then placed under arrest  
10 for a parole violation and taken to Tuolumne General Hospital for treatment for his shoulder injury.  
11 Plaintiff received an x-ray but did not receive any treatment because Plaintiff was told the injury  
12 would heal itself over time. Plaintiff was also told that an MRI would be necessary to tell what the  
13 “real” damage was, but Plaintiff did not receive an MRI.

14 While in the county jail, Plaintiff was told by two employees of the Tuolumne County  
15 Sheriff’s Department that people were going to Plaintiff’s property to steal his property. An officer  
16 (Mcneil) told Plaintiff that they had received information about the people on his property but are  
17 choosing not to stop them. A second officer (Derocha) told Plaintiff that the same people are on  
18 Plaintiff’s property pulling the motor out of Plaintiff’s truck but the Sheriff’s department was  
19 refusing to stop the crimes from occurring because of the monument in front of Plaintiff’s property.  
20 The truck ended up being stolen and not recovered despite Plaintiff’s efforts to notify the sheriff’s  
21 department and the district attorney (Defendant Segerstrom). Plaintiff alleges that someone stole  
22 another car off Plaintiff’s property as well as over \$30,000 worth of property while Defendant  
23 Blankenship watched from across the street.

24 Plaintiff alleges that Officer Derocha gave Plaintiff a hint about where his property was  
25 stolen after the sheriff arrested the thief and told Plaintiff to take care of it himself. Plaintiff asked  
26 why they did not prevent the crime from happening and was told that he had nothing coming unless  
27 “we could work a deal.” (Compl. 12.)

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1 **III. Discussion**

2 **A. Constitutional Claims**

3 Plaintiff claims that Defendants violated his constitutional rights. Plaintiff does not specify  
4 which constitutional rights Defendant violated, nor does Plaintiff specify how Defendants violated  
5 those rights. Plaintiff merely sets forth the facts of his claims and concludes that Defendants  
6 generally violated his constitutional rights and the Posse Comitatus Act, see discussion infra Part  
7 III.B. Plaintiff does quote the Fourteenth Amendment in his complaint. (Compl. 13.) Plaintiff does  
8 not specifically allege that Defendants violated the Fourteenth Amendment, how Defendants violated  
9 the Fourteenth Amendment, or whether Plaintiff is attempting to state a claim under the Due Process  
10 Clause of the Fourteenth Amendment or the Equal Protection Clause of the Fourteenth Amendment.

11 Liberally construed, Plaintiff’s claims are most properly analyzed as violations of the First  
12 Amendment (for retaliation against his exercise of his right to free speech) and the Fourth  
13 Amendment (for the unreasonable destruction and seizure of his property).

14 **1. First Amendment**

15 Plaintiff alleges that Defendants retaliated against him because of the monument erected on  
16 his property that criticized the Tuolumne Sheriff’s Department. “To demonstrate retaliation in  
17 violation of the First Amendment, [a plaintiff] must ultimately prove first that [the defendants] took  
18 action that ‘would chill or silence a person of ordinary firmness from future First Amendment  
19 activities.’” Skoog v. County of Clackamas, 469 F.3d 1221, 1231-32 (9th Cir. 2006) (quoting  
20 Mendocino Env’tl. Ctr. v. Mendocino Cty., 192 F.3d 1283, 1300 (9th Cir. 1999)). Second,  
21 “[plaintiff] must ultimately prove that [the defendants’] desire to cause the chilling effect was a but-  
22 for cause of the defendants’ action.” Id.

23 Plaintiff here alleges that he engaged in constitutionally protected speech by displaying a  
24 monument on his property criticizing the activities of the Tuolumne Sheriff’s Department. Plaintiff  
25 further alleges that Defendants fabricated a story to obtain a search warrant against Plaintiff,  
26 conducted “war games” on Plaintiff’s property while executing the search warrant, destroyed his  
27 property, and allowed third parties to steal his property – all in retaliation against Plaintiff’s speech.

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1 Plaintiff states a cognizable claim for retaliation against the exercise of his First Amendment rights  
2 against Defendants who retaliated against him.

3 Plaintiff alleges that Defendant Craig Davis used false information in order to obtain the  
4 search warrant against Plaintiff. Plaintiff alleges that Davis concocted a story in order to obtain a  
5 search warrant to harass Plaintiff in retaliation for the monument on his property. Plaintiff states a  
6 cognizable claim against Defendant Davis for retaliating against Plaintiff's exercise of his First  
7 Amendment rights.

8 Plaintiff alleges that Defendant Todd Blankenship authored affidavits for the purpose of  
9 obtaining the search warrants against Plaintiff. Plaintiff also alleges that Blankenship was  
10 responsible for the destruction of Plaintiff's property, including the theft of Plaintiff's dog. Plaintiff  
11 also alleges that Blankenship knowingly allowed third parties to steal Plaintiff's property by having  
12 knowledge of the crime as it was occurring and deliberately refusing to prevent it. Plaintiff also  
13 alleges that Blankenship left a gate on Plaintiff's property open to allow others to enter and steal  
14 Plaintiff's property. Plaintiff alleges that Blankenship did so in retaliation for the monument on  
15 Plaintiff's property. Plaintiff states a cognizable claim against Defendant Blankenship for retaliating  
16 against Plaintiff's exercise of his First Amendment rights.

17 Plaintiff also identifies a number of the officials that harassed Plaintiff by conducting "war  
18 games" on Plaintiff's property. Plaintiff alleges that Defendants Jim Earl, Dan Bressler, Lt.  
19 Ditbetter, Zack Gordon, Jeff Gimpler, Jim Mele, and A. J. Ford, were law enforcement officials from  
20 the Sheriff's Department that participated in the execution of the search warrant on Plaintiff's  
21 property on March 14, 2005. Plaintiff alleges that during the execution of the search warrant,  
22 officials unreasonably and unnecessarily destroyed Plaintiff's property in retaliation for the  
23 monument on his property. Plaintiff alleges that Defendants Ken Austin and Tom Shepard were  
24 California Highway Patrol officers that worked in concert with Defendant Blankenship in the  
25 execution of the search warrants against Plaintiff. Plaintiff alleges that they cut locks off buildings,  
26 kicked down doors, broke hinges and welds on Plaintiff's property even after Plaintiff offered the  
27 combination to the locks. Plaintiff alleges that Defendant Bernie Roberts was a parole officer that  
28 participated in playing "war games" on Plaintiff's property during the execution of the search

1 warrant on March 14, 2005. Plaintiff states cognizable claims against Defendants Earl, Bressler,  
2 Ditbetter, Gordon, Gimpler, Mele, Ford, Austin, Shepard and Roberts for retaliating against  
3 Plaintiff's exercise of his First Amendment rights.

4 **2. Fourth Amendment**

5 Plaintiff alleges that during the execution of the search warrant, law enforcement and military  
6 officials ransacked his property by knocking down unlocked doors and destroying property.  
7 "Officers executing a search warrant occasionally 'must damage property in order to perform their  
8 duty.'" Liston v. County of Riverside, 120 F.3d 965, 979 (9th Cir. 1997) However, "unnecessarily  
9 destructive behavior, beyond that necessary to execute a warrant effectively, violates the Fourth  
10 Amendment." Id.

11 Plaintiff thus states a cognizable Fourth Amendment claim against Defendants who executed  
12 the search warrant in an unreasonable manner by wantonly destroying his property. Plaintiff alleges  
13 that law enforcement and military officials unnecessarily kicked down doors that were unlocked.  
14 see Mena v. City of Simi Valley, 226 F.3d 1031, 1041 (9th Cir. 2000) (finding police officers'  
15 actions in breaking down doors that were already unlocked was not reasonably necessary to execute  
16 the search warrant). Plaintiff also alleges that Defendant Blankenship stole Plaintiff's dog based on  
17 his statement during the execution of the search warrant ("It sure would be sad if this dog were to  
18 come up missing") and the fact that the puppy would later come up missing. (Compl. 9.) Plaintiff  
19 states a cognizable Fourth Amendment claim against Davis, Blankenship, Earl, Bressler, Ditbetter,  
20 Gordon, Gimpler, Mele, Ford, Austin, Shepard and Roberts.

21 **B. Posse Comitatus Act**

22 Plaintiff alleges that the use of military troops during the execution of a search warrant  
23 violated the Posse Comitatus Act. 18 U.S.C. § 1385 states that

24 [w]hoever, except in cases and under circumstances expressly  
25 authorized by the Constitution or Act of Congress, willfully uses any  
26 part of the Army or the Air Force as a posse comitatus or otherwise  
to execute the laws shall be fined under this title or imprisoned not  
more than two years, or both.

27 The Posse Comitatus Act thus prohibits the use of Army and Air Force personnel in local law  
28 enforcement activities.

1 Plaintiff's claim under the Posse Comitatus Act fails for two reasons. First, Plaintiff has  
2 offered no authority, and the Court is unable to find any, that suggests that there exists a private right  
3 of action to enforce the Posse Comitatus Act. Thus, Plaintiff may not bring a civil suit for monetary  
4 compensation for an alleged violation of the Posse Comitatus Act. The Posse Comitatus Act is a  
5 criminal statute, the enforcement of which is generally left to the discretion of a prosecutor. U.S.  
6 v. Batchelder, 442 U.S. 114, 124 (1979). The Court has no power to compel a U.S. Attorney to  
7 prosecute Defendants for violation of the Posse Comitatus Act.

8 Second, though the statute explicitly prohibits the use of the Army or the Air Force, the  
9 statute makes no mention of the use of members of a state's National Guards in local law  
10 enforcement activities. Other courts have held that state guardsmen are not part of the Army and the  
11 Posse Comitatus Act does not prohibit the use of state National Guardsmen in local law enforcement  
12 activities. Clark v. U.S., 322 F.3d 1358, 1367 (Fed. Cir. 2003) ("The Act has been uniformly  
13 interpreted to apply to National Guard members only when they are in federal service and not when  
14 they are in service to their states"), U.S. v. Hutchings, 127 F.3d 1255, 1258 (10th Cir. 1997)  
15 ("Guardsmen do not become part of the Army itself until such time as they may be ordered into  
16 active federal duty by an official acting under a grant of statutory authority from Congress. . . .  
17 Therefore a national Guardsmen's participation . . . does not constitute a violation of the [Posse  
18 Comitatus Act]."), U.S. v. Benish, 5 F.3d 20, 25-26 (3rd Cir. 1993) (use of Pennsylvania National  
19 Guard for civilian law enforcement did not violate Posse Comitatus Act). Defendants' use of  
20 California National Guardsmen in the execution of the search warrant against Plaintiff does not  
21 violate the Posse Comitatus Act.

### 22 **C. Claims Against Other Defendants**

23 Plaintiff's allegations against the remaining defendants are vague. It is unclear what  
24 Plaintiff's claims are against these defendants, or how these defendants participated in the above  
25 claims.

#### 26 **1. Claims Against Defendants Rogers and Stanford**

27 Plaintiff alleges that Defendant Richard Rogers was the "Sheriff/Coroner for the County of  
28 Tuolumne". (Compl. 3.) Plaintiff claims that Rogers was "legally responsible for the overall



1 operation of the Tuolumne County Sheriff's Department . . . including the "Activation" of the  
2 California National Guard and other Military Reservists". Plaintiff alleges that Defendant Lee  
3 Stanford "is now "Acting" Sheriff/Coroner for the County of Tuolumne and is/was [a part] of these  
4 allegations". (Compl. 3.) Plaintiff alleges that Defendants Rogers and Stanford were supervisory  
5 personnel in the Tuolumne County Sheriff's Department. However, it is unclear whether either  
6 defendant directly participated in the misconduct alleged by Defendant.

7 Supervisory personnel are generally not liable under section 1983 for the actions of their  
8 employees under a theory of respondeat superior and, therefore, when a named defendant holds a  
9 supervisory position, the causal link between him and the claimed constitutional violation must be  
10 specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld,  
11 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim for relief  
12 under section 1983 based on a theory of supervisory liability, plaintiff must allege some facts that  
13 would support a claim that supervisory defendants either: personally participated in the alleged  
14 deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or  
15 promulgated or "implemented a policy so deficient that the policy 'itself is a repudiation of  
16 constitutional rights' and is 'the moving force of the constitutional violation.'" Hansen v. Black, 885  
17 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th  
18 Cir. 1989).

19 It is unclear whether Rogers or Stanford personally participated in the alleged constitutional  
20 violations, knew of the violations and failed to prevent them, or implemented any policies that were  
21 so deficient that they were in themselves a repudiation of constitutional rights and were the moving  
22 force the constitutional violation. Rogers and Stanford are not liable merely for their supervisory  
23 positions over other Sheriff's Department officials that committed the constitutional violations.  
24 Plaintiff fails to state any claims against Defendant Rogers or Defendant Stanford.

## 25 **2. Claims Against P. T. Jones**

26 Plaintiff alleges that "P.T. Jones County Jail Commander is/was responsible for the actions  
27 of the T.C.S.D. "Jailers" and was to insure that Plaintiff's Rights were not Violated while "Held"  
28 in his Jail.

1 Plaintiff's allegations against Defendant Jones are vague. It is unclear what Jones did, or  
2 whether those actions amounted to a constitutional violation. It is unclear how Plaintiff's rights were  
3 violated while he was held in jail. Plaintiff fails to state any claims against Defendant Jones.

4 **3. Claims Against Donald I. Segerstrom**

5 Plaintiff alleges that Defendant Donald I. Segerstrom was the head district attorney of  
6 Tuolumne County. Plaintiff alleges that Segerstrom worked in concert with Defendants Blankenship  
7 and Davis to prosecute Plaintiff using "tainted evidence". Plaintiff alleges that Segerstrom  
8 maliciously prosecuted Plaintiff in retaliation for the monument on Plaintiff's property.

9 Plaintiff's allegations against Defendant Segerstrom are vague. It is unclear how Segerstrom  
10 worked with Blankenship and Davis, or whether he had any knowledge about the retaliatory purpose  
11 of the search warrants obtained against Plaintiff. Plaintiff does not allege that Segerstrom had  
12 knowledge that the story and evidence used to obtain the search warrants were concocted for  
13 retaliatory purposes. Further, Plaintiff does not allege that he was ultimately prosecuted for any  
14 crimes, what crimes he was prosecuted for, or whether Segerstrom had knowledge that Plaintiff did  
15 not commit any crimes. Plaintiff's imprecise allegations make it unclear whether Plaintiff is alleging  
16 that Plaintiff was actually prosecuted by Segerstrom, or whether Plaintiff is merely referring to  
17 Segerstrom's actions in obtaining the search warrants. Plaintiff fails to state any claims against  
18 Defendant Segerstrom.

19 **4. Claims Against Amy Linbloum**

20 Plaintiff alleges that Amy Linbloum is a "crime reporter" for a local newspaper. Plaintiff  
21 claims that Linbloum "tainted" the jury by writing false information given by law enforcement  
22 officials without properly investigating the facts. Plaintiff further claims that Linbloum was asked  
23 by Plaintiff's sister to hear Plaintiff's side of the story but refused.

24 It is unclear what Plaintiff's claim is against Defendant Linbloum. Section 1983 provides  
25 a remedy for the violation of rights by "persons acting under color of state law". It does not appear  
26 that Linbloum was acting "under color of state law" when working as a "crime reporter" for a local  
27 newspaper. Further, it is unclear what Plaintiff's cause of action against Linbloum is. Section 1983  
28 provides a cause of action of the deprivation of rights under the Constitution or laws of the United

1 States. It is unclear how Linbloum, in her actions as a private crime report for a local newspaper,  
2 deprived Plaintiff of any rights under the Constitution or other law.

3 Plaintiff's allegations against Linbloum at most support a claim for the state law tort of libel.  
4 However, Plaintiff's libel claim against Linbloum is not factually or legally related to Plaintiff's  
5 1983 claims against law enforcement defendants. Federal Rule of Civil Procedure 18(a) allows  
6 multiple claims against a single party and Federal Rule of Civil Procedure 20(a) allows multiple  
7 parties to be joined where the right to relief arises out of the same "transaction, occurrence, or series  
8 of transactions". An unrelated claim against a separate defendant belongs in a separate lawsuit. This  
9 is not only to avoid confusion, but also to ensure that prisoners pay the required filing fees and to  
10 prevent prisoners from circumventing the three strikes rule under the Prison Litigation Reform Act.<sup>1</sup>  
11 28 U.S.C. § 1915(g). Thus, Plaintiff's unrelated libel claim against Defendant Linbloum may not  
12 be brought in the same lawsuit as his constitutional claims against separate law enforcement  
13 defendants.

14 **IV. Conclusion and Order**

15 Plaintiff's complaint states cognizable claims against Defendants Earl, Bressler, Ditbetter,  
16 Gordon, Gimpler, Mele, Ford, Austin, Shepard and Roberts for retaliation against Plaintiff's exercise  
17 of his First Amendment rights and seizure of Plaintiff's property in violation of the Fourth  
18 Amendment. Plaintiff's complaint fails to state claims against any other defendants. The Court will  
19 provide Plaintiff with the opportunity to file an amended complaint curing the deficiencies identified  
20 by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may  
21 not change the nature of this suit by adding new, unrelated claims in his amended complaint. George  
22 v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

23 If Plaintiff does not wish to file an amended complaint and is agreeable to proceeding only  
24 on the claims identified in this order as cognizable, Plaintiff may so notify the Court in writing, and  
25 the Court will issue a recommendation for dismissal of the other claims and defendants, and will

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27  
28 <sup>1</sup>The Prison Litigation Reform Act allows prisoners to file complaints without prepayment of the filing fee unless they have previously filed three frivolous suits as a prisoner. 28 U.S.C. §1915(a),(g).

1 forward Plaintiff ten (10) summonses and ten (10) USM-285 forms for completion and return. Upon  
2 receipt of the forms, the Court will direct the United States Marshal to initiate service of process.

3 If Plaintiff opts to amend, his amended complaint should be brief. Fed. R. Civ. P. 8(a).  
4 Plaintiff must identify how each individual defendant caused the deprivation of Plaintiff's  
5 constitutional or other federal rights: "The inquiry into causation must be individualized and focus  
6 on the duties and responsibilities of each individual defendant whose acts or omissions are alleged  
7 to have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988).  
8 With respect to exhibits, while they are permissible if incorporated by reference, Fed. R. Civ. P.  
9 10(c), they are not necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). In other  
10 words, it is not necessary at this stage to submit evidence to prove the allegations in Plaintiff's  
11 complaint because at this stage Plaintiff's factual allegations will be accepted as true.

12 Although Plaintiff's factual allegations will be accepted as true and that "the pleading  
13 standard Rule 8 announces does not require 'detailed factual allegations,'" "a complaint must contain  
14 sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). (quoting Bell Atlantic Corp. v. Twombly, 550 U.S.  
15 544, 555 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that  
16 allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
17 alleged." Id. (citing Twombly, 550 U.S. at 556).

18  
19 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint.  
20 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567  
21 (9th Cir. 1987). The amended complaint must be "complete in itself without reference to the prior  
22 or superceded pleading." Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged  
23 in an original complaint which are not alleged in an amended complaint are waived." King, 814 F.2d  
24 at 567 (citing London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth,  
25 114 F.3d at 1474. In other words, even the claims that were properly stated in the original complaint  
26 must be completely stated again in the amended complaint.

27 Based on the foregoing, it is HEREBY ORDERED that:

- 28 1. The Clerk's Office shall send Plaintiff a civil rights complaint form;

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- 2. Within **thirty (30) days** from the date of service of this order, Plaintiff must either:
  - a. File an amended complaint curing the deficiencies identified by the Court in this order, or
  - b. Notify the Court in writing that he does not wish to file an amended complaint and wishes to proceed only against Defendants Earl, Bressler, Ditbetter, Gordon, Gimpler, Mele, Ford, Austin, Shepard and Roberts for violation of the First and Fourth Amendments; and
- 3. If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court order.

IT IS SO ORDERED.

**Dated: September 21, 2009**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE