

**NOT FOR PUBLICATION**  
IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

No. 1:08-CV-1435-FJM

## ORDER

David Wilson, et al.,

Defendants.

Under Rule 15(a)(2), Fed. R. Civ. P., a party may amend a complaint after a responsive pleading has been served, “only with the opposing party’s written consent or the court’s leave.” We will grant leave to amend “when justice so requires.” *Id.* A motion for leave to amend may be denied if it appears to be futile or legally insufficient. *Miller v.*

1 Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988). We apply the same standard for  
2 determining the legal sufficiency of a proposed amendment that we apply in deciding a Rule  
3 12(b)(6) motion. Id.

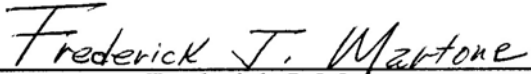
4 Plaintiff alleges in the proposed amended complaint that defendant Captain Galvan  
5 and the CDCR violated his Eighth Amendment rights by failing to adequately train and  
6 supervise the subordinate officers who held him in restraints. However, the CDCR is not  
7 a “person” under § 1983 and therefore is not a proper party. See Will v. Michigan Dept. of  
8 State Police, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312 (1989).

9 Plaintiff also alleges that Captain Galvan violated his constitutional rights by failing  
10 to properly train and supervise subordinate officers. There is no *respondeat superior* liability  
11 under § 1983. Rather, a supervisor is liable in his individual capacity only if he “participated  
12 in or directed the violations, or knew of the violations and failed to act to prevent them,”  
13 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989), or for his own culpable action or  
14 inaction in the training or supervision of his subordinates that resulted in a constitutional  
15 deprivation. See Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991).

16 Plaintiff fails to allege facts to support a claim that defendant Galvan either  
17 participated in or directed any alleged constitutional violation by his subordinates, or that he  
18 knew of the violations but failed to act to prevent them. Plaintiff’s conclusory allegations  
19 that Galvan failed to properly train and supervise his subordinates is insufficient to state a  
20 claim for relief. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (“Threadbare recitals  
21 of the elements of a cause of action, supported by mere conclusory statements, do not  
22 suffice.”).

23 Because the proposed claims in the amended complaint would be futile, **IT IS**  
24 **ORDERED DENYING** plaintiff’s motion for leave to amend (doc. 17).

25 DATED this 17<sup>th</sup> day of May, 2010.

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27   
28 Frederick J. Martone  
United States District Judge