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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

GERROD L. HERNDON,	)	Case No.: 1:16-cv-00660-SAB (PC)
	)	
Plaintiff,	)	
	)	ORDER DISMISSING COMPLAINT, WITH
v.	)	LEAVE TO AMEND
	)	
BOARD OF PRISON, et al.,	)	[ECF No. 1]
	)	
Defendants.	)	
	)	
	)	

Plaintiff Edwin Garcia is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(c), Plaintiff consented to the jurisdiction of the United States Magistrate Judge on May 23, 2016. Local Rule 302.

**I.  
SCREENING REQUIREMENT**

The in forma pauperis statutes provides that “the court shall dismiss the case at any time if the court determines that ... the action or appeal ... fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief....” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)), and courts “are not required to indulge

1 unwarranted inferences,” Doe I v. Walmart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal  
2 quotation marks and citation omitted). While factual allegations are accepted as true, legal  
3 conclusions are not. Iqbal, 556 U.S. at 678.

4 Under section 1983, Plaintiff must demonstrate that each defendant personally participated in  
5 the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires the  
6 presentation of factual allegations sufficient to state a plausible claim for relief. Iqbal, 556 U.S. at  
7 678-679; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of  
8 misconduct falls short of meeting this plausibility standard. Id.

## 9 II.

### 10 COMPLAINT ALLEGATIONS

11 Plaintiff names the Board of Prison Term Commissioner, Appeals Coordinator, Parole Board,  
12 Agent of Parole, and California Law Supervisor, as Defendants.

13 Plaintiff contends the Board of Prison Terms is bias and racist “over their entire staff. I  
14 complete the time due to the state and still can’t get the proper result[]s. One member may be related  
15 closely to a person I may have offended or accidentally hurt. Sorry does not seem to be enough for the  
16 commissioner.” (Compl. at 3, ECF No. 1.)

17 Plaintiff seeks expungement, \$1,000,000, “abolish slavery”, discharge parole, and appointment  
18 of counsel.

## 19 III.

### 20 DISCUSSION

#### 21 A. The Complaint

22 The allegations in Plaintiff’s complaint are so vague and conclusory that the Court is unable to  
23 determine whether the complaint is frivolous or fails to state a claim for relief. The complaint does  
24 not contain a short and plain statement as required by Federal Rule of Civil Procedure 8(a)(2).  
25 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to the  
26 defendants and must allege facts that support the elements of the claim plainly and succinctly. Jones  
27 v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).

1 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other  
2 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092  
3 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.  
4 Williams, 297 F.3d 930, 934 (9th Cir. 2002). “Section 1983 is not itself a source of substantive rights,  
5 but merely provides a method for vindicating federal rights elsewhere conferred.” Crowley v. Nevada  
6 ex rel. Nevada Sec’y of State, 678 F.3d 730, 734 (9th Cir. 2012) (citing Graham v. Connor, 490 U.S.  
7 386, 393-94 (1989)) (internal quotation marks omitted). To state a claim, Plaintiff must allege facts  
8 demonstrating the existence of a link, or causal connection, between each defendant’s actions or  
9 omissions and a violation of his federal rights. Lemire v. California Dep’t of Corr. and Rehab., 726  
10 F.3d 1062, 1074-75 (9th Cir. 2013); Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

11 In addition, supervisory personnel may not be held liable under section 1983 for the actions of  
12 subordinate employees based on *respondeat superior*, or vicarious liability. Crowley v. Bannister, 734  
13 F.3d 967, 977 (9th Cir. 2013); accord Lemire v. California Dep’t of Corr. and Rehab., 726 F.3d 1062,  
14 1074-75 (9th Cir. 2013); Lacey v. Maricopa County, 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc).  
15 “A supervisor may be liable only if (1) he or she is personally involved in the constitutional  
16 deprivation, or (2) there is a sufficient causal connection between the supervisor’s wrongful conduct  
17 and the constitutional violation.” Crowley, 734 F.3d at 977 (citing Snow, 681 F.3d at 989) (internal  
18 quotation marks omitted); accord Lemire, 726 F.3d at 1074-75; Lacey, 693 F.3d at 915-16. “Under  
19 the latter theory, supervisory liability exists even without overt personal participation in the offensive  
20 act if supervisory officials implement a policy so deficient that the policy itself is a repudiation of  
21 constitutional rights and is the moving force of a constitutional violation.” Crowley, 734 F.3d at 977  
22 (citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)) (internal quotation marks omitted).

23 Furthermore, “[t]he Fourteenth Amendment’s Due Process Clause protects persons against  
24 deprivations of life, liberty, or property; and those who seek to invoke its procedural protection must  
25 establish that one of these interests is at stake.” Wilkinson v. Austin, 545 U.S. 209, 221 (2005).  
26 Plaintiff does not have a protected liberty interest in the processing of his appeals, and therefore, he  
27 cannot pursue a claim for denial of due process with respect to the handling or resolution of his  
28

1 appeals. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639,  
2 640 (9th Cir. 1988)).

3 Plaintiff's present complaint fails to state a claim upon which relief may be granted.

4 **B. Appointment of Counsel:**

5 To the extent Plaintiff seeks the appointment of counsel, Plaintiff is advised he does not have a  
6 constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th  
7 Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. §  
8 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296,  
9 298 (1989). However, in certain exceptional circumstances the court may request the voluntary  
10 assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

11 Without a reasonable method of securing and compensating counsel, the court will seek  
12 volunteer counsel only in the most serious and exceptional cases. In determining whether  
13 "exceptional circumstances exist, the district court must evaluate both the likelihood of success on the  
14 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
15 legal issues involved." Id. (internal quotation marks and citations omitted).

16 The test for exceptional circumstances requires the Court to evaluate the Plaintiff's likelihood  
17 of success on the merits and the ability of the Plaintiff to articulate his claims pro se in light of the  
18 complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.  
19 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Plaintiff's complaint fails to state a  
20 cognizable claim for relief, and therefore the Court does not find the likelihood of success on the  
21 merits. Accordingly, Plaintiff is not entitled to appointment of counsel.

22 **IV.**

23 **CONCLUSION AND ORDER**

24 For the reasons stated, Plaintiff's complaint fails to state a claim upon which relief may be  
25 granted. Plaintiff is granted leave to file an amended complaint within thirty (30) days. Noll v.  
26 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by  
27 adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.  
28 2007) (no "buckshot" complaints).

1 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each  
2 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights.  
3 Iqbal, 556 U.S. 662, 678. "The inquiry into causation must be individualized and focus on the duties  
4 and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a  
5 constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as  
6 true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level .  
7 . ." Twombly, 550 U.S. at 555 (citations omitted).

8 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana, Inc.,  
9 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be  
10 "complete in itself without reference to the prior or superseded pleading," Local Rule 220. "All  
11 causes of action alleged in an original complaint which are not alleged in an amended complaint are  
12 waived." King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.  
13 1981)); accord Forsyth, 114 F.3d at 1474.

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

- 15 1. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 16 2. Plaintiff's complaint, filed May 11, 2016, is dismissed for failure to state a claim;
- 17 3. Plaintiff's request for appointment of counsel is denied;
- 18 4. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
19 amended complaint; and
- 20 5. If Plaintiff fails to file an amended complaint in compliance with this order, this action  
21 will be dismissed for failure to state a claim.

22  
23 IT IS SO ORDERED.

24 Dated: October 13, 2016

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26 \_\_\_\_\_  
27 UNITED STATES MAGISTRATE JUDGE  
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