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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAMEON D. HAM, et al.  
Plaintiffs,  
v.  
CDCR, et al.,  
Defendants.

**Case No. 1:17-cv-01435-LJO-MJS (PC)**

**ORDER GRANTING MOTION FOR  
EXTENSION OF TIME TO FILE  
OBJECTIONS**

**(ECF No. 12)**

**ORDER WITHDRAWING FINDINGS AND  
RECOMMENDATIONS**

**(ECF No. 10)**

**ORDER SEVERING PLAINTIFFS' CLAIMS,  
AND DIRECTING CLERK'S OFFICE TO  
OPEN NEW ACTIONS FOR GREGORY  
RICHARDSON AND RICKY CALDWELL**

**THIRTY DAY DEADLINE FOR ALL THREE  
PLAINTIFFS TO EACH FILE AN AMENDED  
COMPLAINT IN HIS OWN CASE**

**FORTY-FIVE DAY DEADLINE FOR  
PLAINTIFFS RICHARDSON AND  
CALDWELL TO EACH SUBMIT AN  
APPLICATION TO PROCEED IN FORMA  
PAUPERIS, OR PAY THE FILING FEES, IN  
HIS OWN CASE**

26 Plaintiffs are state prisoners proceeding pro se and in forma pauperis in this civil  
27 rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United  
28 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

1 The matter proceeds on Plaintiffs’ original complaint against Defendants California  
2 Department of Corrections and Rehabilitation (“CDCR”), S. Kernan, Parole Hearing  
3 Board, Stuart Sherman, S. Kane, T. Jones, and Superior Courts of California. (ECF No.  
4 1.)

5 On February 16, 2018, the undersigned screened the complaint pursuant to 28  
6 U.S.C. § 1915A(a) and issued findings and recommendations to dismiss this action. (ECF  
7 No. 10.) Plaintiffs were afforded fourteen days to file objections to the findings and  
8 recommendations. (Id.) On March 6, 2018, Plaintiffs filed a motion for extension of time to  
9 file objections. (ECF No. 12.) Good cause appearing, and in light of Plaintiffs’ pro se  
10 status, the Court hereby grants that motion. Accordingly, Plaintiffs’ objections (ECF No.  
11 13) to the findings and recommendations filed on March 16, 2018 are deemed timely.

12 Upon review of the objections, the undersigned has determined that the February  
13 16, 2018 findings and recommendations should, and shall, be withdrawn. The Court also  
14 will direct that each of the putative Plaintiff’s proceed separately, if at all, and so will sever  
15 the claims of co-Plaintiffs Gregory Richardson and Ricky Caldwell.

16 **I. Background**

17 Plaintiffs are currently incarcerated at California Substance Abuse Treatment  
18 Facility in Corcoran, California where their claims arose. (ECF No. 1.)

19 Plaintiffs allege that California Proposition 57, passed by California voters in 2016,  
20 gave them the right to a parole hearing after they served the primary sentence imposed  
21 on their conviction. They sought such parole review by filing a Form 22 informal  
22 complaint with the prison, but the authorities refused to have their cases referred to the  
23 Parole Hearing Board. (Id. at 4-5.)

24 Plaintiffs present three claims:

25 (1) “While acting under color of State law each defendant breached their duty  
26 by denying California Article I, Sections 32 guaranteed by State constitution and/or  
27 Federal.” (Id. at 7.)

28 (2) “The misuse of power possessed by virtue of state law while willful

1 participant in joint activities with state or its agents. . . . Working to illegally detain  
2 Plaintiff[] in a prison facility.” (Id. at 8.)

3 (3) “The defendants violated substantial due process benefits Plaintiff[ is]  
4 entitled by denying California Constitution Article I, Section 32 A, its effect that mandate  
5 term adjustments requiring only primary offense be served excluding enhancements,  
6 consecutive sentences and alternative sentences, in violation of U.S. Constitution  
7 Amendment Fourteen.” (Id. at 9.)

8 Plaintiffs request injunctive relief ordering Defendants to stop denying them the  
9 relief provided by California Constitution Article I, Section 32 (A)(2). (Id. at 10.)

10 In the findings and recommendations, the undersigned initially concluded that  
11 Plaintiffs’ three claims, in challenging the execution of state court sentences, effectively  
12 sought habeas relief and were not cognizable as a civil rights claim. (ECF No. 10.)

13 “[W]hen a state prisoner is challenging the very fact or duration of his physical  
14 imprisonment, and the relief he seeks is a determination that he is entitled to immediate  
15 or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas  
16 corpus.” Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). The exclusive statutory  
17 framework for challenging either the validity or the execution of a state court judgment is  
18 provided by 28 U.S.C. § 2254. See White v. Lambert, 370 F.3d 1002, 1009–1010 (9th  
19 Cir. 2004) (adopting “the majority view that 28 U.S.C. § 2254 is the exclusive vehicle for a  
20 habeas petition by a state prisoner in custody pursuant to a state court judgment, even  
21 when the petitioner is not challenging his underlying state court conviction), overruled on  
22 other grounds by Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010). The Magistrate  
23 Judge concluded that Plaintiffs’ claims seek to challenge the execution of their sentence  
24 from the state court and clearly sound in habeas corpus.

25 Plaintiffs objected that they do not seek immediate or speedier release from  
26 custody, and so their case does not sound in federal habeas law. (ECF No. 13.) In  
27 support, they refer to recent findings and recommendations in the Central District of  
28 California finding that a challenge under Proposition 57 does not sound in habeas and

1 should be refiled as a Section 1983 action. (Id. at 5-10) (citing Solano v. California  
2 Substance Abuse Treatment Facility, et al., No. CV 17-2671 RGK (AGR), 2017 WL  
3 5640920 (C.D. Cal. Oct. 24, 2017). Plaintiffs ask this Court to adopt the reasoning of the  
4 Solano court and allow this matter to proceed under Section 1983.

5 **II. Withdrawal of Findings and Recommendations**

6 Plaintiffs' objections clarify that they do not seek in their complaint enforcement of  
7 Proposition 57 in such a way as to produce an immediate release. (ECF No. 13.). Without  
8 necessarily adopting that conclusion here, the Court will withdraw the findings and  
9 recommendations issued on February 6, 2018 (ECF No. 10) and invite the Plaintiffs to  
10 address and clarify the nature of their claims (separately) in an amended complaint by  
11 Plaintiff Ham and new Complaints by the other two Plaintiffs.

12 **III. Proposition 57**

13 On November 8, 2016, the California voters approved The Public Safety and  
14 Rehabilitation Act of 2016—Proposition 57—and it took effect the next day. People v.  
15 Marquez, 11 Cal. App. 5th 816, 821 (Cal. App. 2017); Cal. Const., Art. II, § 10(a).  
16 Proposition 57 added Article 1, section 32 to the California Constitution. That section  
17 provides, in relevant part, "Parole consideration: Any person convicted of a nonviolent  
18 felony offense and sentenced to state prison shall be eligible for parole consideration  
19 after completing the full term of his or her primary offense," defined for these purposes as  
20 "the longest term of imprisonment imposed by the court for any offense, excluding the  
21 imposition of an enhancement, consecutive sentence, or alternative sentence." (Cal.  
22 Const., art. I, § 32, subds. (a)(1), (a)(1)(A). Proposition 57 provides an inmate who has  
23 completed his base term with a hearing before the Board of Parole Hearings (Cal. Const.  
24 Art. I, Sec. 32(a)).

25 Few California federal courts have had cause to screen Section 1983 complaints  
26 with allegations similar to those presented by Plaintiff's. See Jones v. California State  
27 Superior Court, No. 17-cv-00232-DAD-BAM (PC), ECF No. 12 (E.D. Cal. Oct. 5, 2017)  
28 (dismissing complaint with leave to amend for failure to state a claim); McCarary v.

1 Kernan, No. 2:17-cv-1944 KJN P, 2017 WL 4539992 (E.D. Cal. Oct. 11, 2017)  
2 (dismissing complaint with leave to amend as Plaintiff's due process claim is based on an  
3 alleged violation of state law, which did not occur); Herrera v. California State Superior  
4 Courts, No. 1:17-cv-386-AWI-BAM, 2018 WL 400320 (E.D. Cal. Jan. 12, 2018)  
5 (screening order dismissing complaint with leave to amend for failure to state a claim);  
6 Daniels v. California Department of Corrections and Rehabilitation, No. 1:17-cv-01510-  
7 AWI-BAM, 2018 WL 489155 (E.D. Cal. Jan. 19, 2018) (screening order dismissing  
8 complaint with leave to amend for failure to state a claim); cf. Hemingway v. CDCR, No.  
9 2:17-cv-0534-JAM-CMK-P, 2017 U.S. Dist. LEXIS 212819 (E.D. Cal. Dec. 28, 2017)  
10 (court noted that Plaintiff's complaint challenging the application of Proposition 57 had not  
11 been screened by the court, but suggested that to the extent that the complaint  
12 challenged Plaintiff's conviction it is not cognizable under § 1983).

13         These federal cases determined that the complaints did not state a claim for relief  
14 under Section 1983 because they challenge only the interpretation of a state statute.  
15 Jones, ECF No. 12 at 5; McCarary, 2017 WL 4539992, at \*3; Herrera, 2018 WL 400320,  
16 at \*3; Daniels, 2018 WL 489155, at \*3. However, the Magistrate Judge in each case  
17 allowed the filing of an amended complaint.

18         The complaint filed here alleges that Plaintiffs' Proposition 57 petitions to the  
19 Parole Hearing Board were not forwarded because CDCR had not yet created a process  
20 for implementation of Proposition 57. (ECF No. 1.) On December 21, 2017, CDCR  
21 completed the rulemaking process and enacted regulations to effectuate Proposition 57.  
22 See 15 CA ADC 2449.1, 2, 3, 4, 5; 15 CA ADC 3042, 3043, 3044, 3490, 3491, 3492,  
23 3493; 15 CA ADC 3043.1, 2, 3, 4, 5, 6, 7, 8.

24         These new regulations provide a mechanism for CDCR to initiate reviews of all  
25 inmates to make an initial eligibility determination. 15 CA ADC 3491. Inmates determined  
26 to be eligible for parole hearings under Proposition 57 are to have their cases referred to  
27 Parole Hearing Boards. 15 CA ADC 3492. Inmates who are deemed ineligible are to be  
28 notified of their status and are subject to the Inmate Appeal Process. 15 CA ADC

1 3492(d), (f).

2 Plaintiff's individual amended complaints should take into account the issues  
3 raised in this Court's original findings and recommendations as well as the current state  
4 of the case law and the regulations.

5 **IV. Severance of Claims**

6 In light of the decision to proceed to consideration of an amended complaint, the  
7 Court determines that each Plaintiff must proceed separately on his own claims. Rule 21  
8 of the Federal Rules of Civil Procedure provides that "[o]n motion or on its own, the court  
9 may at any time, on just terms, add or drop a party . . . [or] sever any claim against a  
10 party." Fed. R. Civ. P. 21. Courts have broad discretion regarding severance. See  
11 Coleman v. Quaker Oats Co., 232 F.3d 1271, 1297 (9th Cir. 2000); Maddox v. County of  
12 Sacramento, No. 2:06-cv-0072-GEB-EFB, 2006 WL 3201078, \*2 (E.D. Cal. Nov. 6,  
13 2006).

14 In the Court's experience, an action brought by multiple plaintiffs proceeding pro  
15 se in which one or more of the plaintiffs are incarcerated presents procedural problems  
16 that cause delay and confusion. Delay can, and often does, result from the frequent  
17 transfer of inmates to other facilities or institutions, the changes in address that occur  
18 when inmates are released on parole, and the difficulties faced by inmates who attempt  
19 to communicate with each other and other unincarcerated individuals. The same is true of  
20 the need for all plaintiffs to agree on all filings made in this action, and the need for all  
21 filings to contain the original signatures of all plaintiffs. Therefore, Plaintiffs' claims shall  
22 be severed; Plaintiff Ham shall proceed as the sole plaintiff in this action; and new actions  
23 shall be opened for Plaintiffs Richardson and Caldwell. Gaffney v. Riverboat Serv. of  
24 Indiana, 451 F.3d 424, 441 (7th Cir. 2006). Each Plaintiff shall be solely responsible for  
25 prosecuting his own action.

26 Each of the three Plaintiffs shall be given thirty days to file, in his own action, an  
27 amended complaint. Plaintiffs must each demonstrate in their individual amended  
28 complaints how the conditions complained of resulted in a deprivation of their

1 constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Each Plaintiff  
2 must set forth “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’”  
3 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550  
4 U.S. 544, 555 (2007)); Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).  
5 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal,  
6 556 U.S. at 679; Moss, 572 F.3d at 969. Each amended complaint must specifically state  
7 how each Defendant is involved. Each Plaintiff must demonstrate that each Defendant  
8 personally participated in the deprivation of his rights. Jones, 297 F.3d at 934 (emphasis  
9 added). The Plaintiffs must, of course, also address the particular issues raised by  
10 recent Court orders and otherwise as discussed above.

11 Plaintiffs Richardson and Caldwell shall also be required to submit applications to  
12 proceed in forma pauperis or pay the \$400.00 filing fee for their own actions within forty-  
13 five days.

14 Plaintiffs should note that although they have been given the opportunity to  
15 amend, it is not for the purposes of adding new defendants relating to issues arising after  
16 October 26, 2017. In addition, Plaintiffs should take care to include only those claims that  
17 have been exhausted prior to the initiation of this suit on October 26, 2017.

18 Finally, Plaintiffs are advised that Local Rule 220 requires that an amended  
19 complaint be complete in itself without reference to any prior pleading. As a general rule,  
20 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d  
21 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no  
22 longer serves any function in the case. Therefore, in an amended complaint, as in an  
23 original complaint, each claim and the involvement of each defendant must be sufficiently  
24 alleged. Each amended complaint should be clearly and boldly titled “First Amended  
25 Complain,” refer to the appropriate case number, and be an original signed under penalty  
26 of perjury.

27 **V. Conclusion**

28 In summary, for the reasons outlined above the Court will withdraw the February

1 16, 2018 findings and recommendations, sever the claims of co-Plaintiffs Gregory  
2 Richardson and Ricky Caldwell, order each of the three Plaintiffs to proceed in his own  
3 actions, and orders Gregory Richardson and Ricky Caldwell to each file their own  
4 application to proceed in forma pauperis or pay the filing fee in their individual actions.

5 Accordingly, it is HEREBY ORDERED that:

6 1. Plaintiffs' motion for extension of time to file objections (ECF No. 12) is  
7 granted and Plaintiffs' objections (ECF No. 13) to the findings and recommendations filed  
8 on March 16, 2018 are deemed timely;

9 2. Plaintiff Ham shall proceed as the sole plaintiff in case number 1:17-cv-  
10 01435-LJO-MJS (PC);

11 3. The claims of Plaintiffs Richardson and Caldwell are severed from the  
12 claims of Plaintiff Ham;

13 4. The Clerk of the Court is directed to:

14 a. Open a separate Section 1983 civil action for each of the following two  
15 Plaintiffs:

16 (1) Gregory Richardson, AK-4372  
17 California Substance Abuse Treatment Facility  
18 P.O. Box 5242  
19 Corcoran, CA 93212

20 (2) Ricky Caldwell, J18278  
21 California Substance Abuse Treatment Facility  
22 P.O. Box 5242  
23 Corcoran, CA 93212

24 b. Assign the new actions to the Magistrate Judge and District Judge to  
25 whom the instant case is assigned and make appropriate adjustment in the assignment  
26 of civil cases to compensate for such assignment;

27 c. File and docket a copy of this order in the new actions opened for  
28 Plaintiffs Richardson and Caldwell;

d. Place a copy of the Complaint (ECF No. 1), which was filed on  
October 26, 2017 in the instant action, in the new actions opened for Plaintiffs

1 Richardson and Caldwell;

2 e. Send each of the three Plaintiffs an endorsed copy of the Complaint  
3 (ECF No. 1), filed on October 26, 2017, bearing the case number assigned to his own  
4 individual action;

5 f. Send each of the three Plaintiffs a Section 1983 civil rights complaint  
6 form; and

7 g. Send to Plaintiffs Richardson and Caldwell an application to proceed  
8 in forma pauperis;

9 5. Within thirty (30) days from the date of service of this order, the three  
10 Plaintiffs shall each file an amended complaint bearing his own case number;

11 6. Each amended complaint should be clearly and boldly titled "FIRST  
12 AMENDED COMPLAINT" and be an original signed under penalty of perjury;

13 7. Within forty-five (45) days from the date of service of this order, Plaintiffs  
14 Richardson and Caldwell shall each submit an application to proceed in forma pauperis,  
15 or payment of the \$400.00 filing fee, in his own case; and

16 8. The failure to comply with this order will result in a recommendation that the  
17 action be dismissed.

18  
19 IT IS SO ORDERED.

20 Dated: March 29, 2018

*/s/ Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE

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