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

CHANTHON BUN,

Plaintiff,

No. CIV S-09-0631 EFB P

vs.

T. FELKER, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Plaintiff's declaration makes the showing required by 28 U.S.C. § 1915(a)(1) and (2).

Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

The court has reviewed plaintiff's complaint, which names approximately 85 individuals as defendants. For the limited purposes of § 1915A screening, the court finds that the complaint states cognizable claims against defendants Watkins, Perry, Hook, Lower, Hanshumaker,

1 Ramsey, Sanchez, Essman, Kirkland, Garate, Kissinger, Marsh, Brown, Aurich, and Felker. *See*  
2 28 U.S.C. § 1915A. The complaint does not state a cognizable claim against any of the  
3 remaining defendants.

4 The Civil Rights Act under which this action was filed provides:

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

8 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts  
9 establish the defendant’s personal involvement in the constitutional deprivation or a causal  
10 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.  
11 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44  
12 (9th Cir. 1978).

13 A district court must construe a pro se pleading “liberally” to determine if it states a  
14 claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an  
15 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While  
16 detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of  
17 action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct.  
18 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff  
19 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
20 plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

21 A claim has facial plausibility when the plaintiff pleads factual content that allows  
22 the court to draw the reasonable inference that the defendant is liable for the  
23 misconduct alleged. The plausibility standard is not akin to a “probability  
24 requirement,” but it asks for more than a sheer possibility that a defendant has  
acted unlawfully. Where a complaint pleads facts that are merely consistent with a  
defendant’s liability, it stops short of the line between possibility and plausibility  
of entitlement to relief.

25 *Id.* (citations and quotation marks omitted). Although legal conclusions can provide the  
26 framework of a complaint, they must be supported by factual allegations, and are not entitled to

1 the assumption of truth. *Id.* at 1950.

2 Plaintiff fails to allege how the seventy remaining defendants were personally involved in  
3 violating his rights. It is plaintiff's responsibility to allege facts to state a plausible claim for  
4 relief. *Iqbal*, 129 S. Ct. at 1949; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

5 Plaintiff's conclusory allegations as to the remaining defendants do not meet this standard.

6 Thus, to proceed against any additional defendants, plaintiff must file an amended complaint.

7 Plaintiff may not sue any supervisor on a theory that the supervisor is liable for the acts  
8 of his or her subordinates. *See Polk County v. Dodson*, 454 U.S. 312, 325 (1981). A supervisor  
9 may be held liable in his or her individual capacity "for his own culpable action or inaction in  
10 the training, supervision or control of his subordinates." *Watkins v. City of Oakland, Cal.*, 145  
11 F.3d 1087, 1093 (9th Cir. 1998) (quoting *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th  
12 Cir. 1991)). "A supervisor is only liable for constitutional violations of his subordinates if the  
13 supervisor participated in or directed the violations, or knew of the violations and failed to act to  
14 prevent them." *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

15 Plaintiff may also not impose liability on defendants simply because they played a role in  
16 processing plaintiff's inmate appeals, as there are no constitutional requirements regarding how a  
17 grievance system is operated. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003)  
18 (holding that prisoner's claimed loss of a liberty interest in the processing of his appeals does not  
19 violate due process because prisoners lack a separate constitutional entitlement to a specific  
20 prison grievance system).

21 Plaintiff may proceed forthwith to serve defendants Watkins, Perry, Hook, Lower,  
22 Hanshumaker, Ramsey, Sanchez, Essman, Kirkland, Garate, Kissinger, Marsh, Brown, Aurich,  
23 and Felker and pursue his claims against only those defendants or he may delay serving any  
24 defendant and attempt to state cognizable claims against additional defendants.

25 If plaintiff elects to attempt to amend his complaint to state cognizable claims against  
26 additional defendants, he has 30 days so to do. He is not obligated to amend his complaint.

1 However, if plaintiff elects to proceed forthwith against defendants Watkins, Perry, Hook,  
2 Lower, Hanshumaker, Ramsey, Sanchez, Essman, Kirkland, Garate, Kissinger, Marsh, Brown,  
3 Aurich, and Felker, against whom he has stated cognizable claims for relief, then within 20 days  
4 he must return materials for service of process enclosed herewith. In this event the court will  
5 construe plaintiff's election as consent to dismissal of all claims against the remaining  
6 defendants without prejudice.

7 Any amended complaint must show that the federal court has jurisdiction and that  
8 plaintiff's action is brought in the right place, that plaintiff is entitled to relief if plaintiff's  
9 allegations are true, and must contain a request for particular relief. Plaintiff must identify as a  
10 defendant only persons who personally participated in a substantial way in depriving plaintiff of  
11 a federal constitutional right. *Johnson*, 588 F.2d at 743 (a person subjects another to the  
12 deprivation of a constitutional right if he does an act, participates in another's act or omits to  
13 perform an act he is legally required to do that causes the alleged deprivation). If plaintiff  
14 contends he was the victim of a conspiracy, he must identify the participants and allege their  
15 agreement to deprive him of a specific federal constitutional right.

16 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.  
17 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant.  
18 Fed. R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
19 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

20 Unrelated claims against different defendants must be pursued in multiple lawsuits. "The  
21 controlling principle appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim . . . may join, []  
22 as independent or as alternate claims, as many claims . . . as the party has against an opposing  
23 party.' Thus multiple claims against a single party are fine, but Claim A against Defendant 1  
24 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims against  
25 different defendants belong in different suits, not only to prevent the sort of morass [a multiple  
26 claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required

1 filing fees-for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or  
2 appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C.  
3 § 1915(g).” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007); *see also* Fed. R. Civ. P.  
4 20(a)(2) (joinder of defendants not permitted unless both commonality and same transaction  
5 requirements are satisfied).

6 The federal rules contemplate brevity. *See Galbraith v. County of Santa Clara*, 307 F.3d  
7 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any  
8 heightened pleading standard in cases other than those governed by Rule 9(b).”); Fed. R. Civ. P.  
9 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be  
10 set forth in short and plain terms, simply, concisely and directly. *See Swierkiewicz v. Sorema*  
11 *N.A.*, 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,  
12 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8. Plaintiff  
13 must eliminate from plaintiff’s pleading all preambles, introductions, argument, speeches,  
14 explanations, stories, griping, vouching, evidence, attempts to negate possible defenses,  
15 summaries, and the like. *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996) (affirming  
16 dismissal of § 1983 complaint for violation of Rule 8 after warning); *see Crawford-El v. Britton*,  
17 523 U.S. 574, 597 (1998) (reiterating that “firm application of the Federal Rules of Civil  
18 Procedure is fully warranted” in prisoner cases). The court (and defendant) should be able to  
19 read and understand plaintiff’s pleading within minutes. *McHenry*, 84 F.3d at 1177. A long,  
20 rambling pleading, including many defendants with unexplained, tenuous or implausible  
21 connection to the alleged constitutional injury or joining a series of unrelated claims against  
22 many defendants very likely will result in delaying the review required by 28 U.S.C. § 1915 and  
23 an order dismissing plaintiff’s action pursuant to Fed. R. Civ. P. 41 for violation of these  
24 instructions.

25 An amended complaint must be complete in itself without reference to any prior  
26 pleading. Local Rule 220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff

1 files an amended complaint, the original pleading is superseded.

2 By signing an amended complaint plaintiff certifies he has made reasonable inquiry and  
3 has evidentiary support for his allegations and that for violation of this rule the court may impose  
4 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

5 A prisoner may bring no § 1983 action until he has exhausted such administrative  
6 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. *Booth*  
7 *v. Churner*, 532 U.S. 731, 741 (2001). A California prisoner or parolee may appeal “any  
8 departmental decision, action, condition, or policy which they can demonstrate as having an  
9 adverse effect upon their welfare.” Cal. Code Regs. tit. 15, §§ 3084.1, *et seq.* An appeal must  
10 be presented on a CDC form 602 that asks simply that the prisoner “describe the problem” and  
11 “action requested.” Therefore, this court ordinarily will review only claims against prison  
12 officials within the scope of the problem reported in a CDC form 602 or an interview or claims  
13 that were or should have been uncovered in the review promised by the department. Plaintiff is  
14 further admonished that by signing an amended complaint he certifies his claims are warranted  
15 by existing law, including the law that he exhaust administrative remedies, and that for violation  
16 of this rule plaintiff risks dismissal of his entire action, including his claims against defendants  
17 Watkins, Perry, Hook, Lower, Hanshumaker, Ramsey, Sanchez, Essman, Kirkland, Garate,  
18 Kissinger, Marsh, Brown, Aurich, and Felker.

19 Accordingly, the court hereby orders that:

20 1. Plaintiff’s request to proceed *in forma pauperis* is granted.

21 2. Plaintiff must pay the statutory filing fee of \$350 for this action. All payments shall  
22 be collected and paid in accordance with the notice to the Director of the California Department  
23 of Corrections and Rehabilitation filed concurrently herewith.

24 3. The allegations in the pleading are sufficient at least to state cognizable claims against  
25 defendants Watkins, Perry, Hook, Lower, Hanshumaker, Ramsey, Sanchez, Essman, Kirkland,  
26 Garate, Kissinger, Marsh, Brown, Aurich, and Felker. *See* 28 U.S.C. § 1915A. All claims

1 against the remaining defendants are dismissed with leave to amend. Within 30 days of service  
2 of this order, plaintiff may amend his complaint to attempt to state cognizable claims against the  
3 remaining defendants. Plaintiff is not obligated to amend his complaint.

4 4. With this order the Clerk of the Court shall provide to plaintiff a blank summons, a  
5 copy of the pleading filed March 6, 2009, 15 USM-285 forms and instructions for service of  
6 process on defendants Watkins, Perry, Hook, Lower, Hanshumaker, Ramsey, Sanchez, Essman,  
7 Kirkland, Garate, Kissinger, Marsh, Brown, Aurich, and Felker. Within 20 days of service of  
8 this order plaintiff may return the attached Notice of Submission of Documents with the  
9 completed summons, the completed USM-285 forms, and 16 copies of the March 6, 2009  
10 complaint. The court will transmit them to the United States Marshal for service of process  
11 pursuant to Fed. R. Civ. P. 4. Defendants Watkins, Perry, Hook, Lower, Hanshumaker, Ramsey,  
12 Sanchez, Essman, Kirkland, Garate, Kissinger, Marsh, Brown, Aurich, and Felker will be  
13 required to respond to plaintiff's allegations within the deadlines stated in Fed. R. Civ. P.  
14 12(a)(1). In this event, the court will construe plaintiff's election to proceed forthwith as consent  
15 to an order dismissing his defective claims against the remaining defendants without prejudice.

16 5. Failure to comply with this order may result in this action being dismissed.

17 Dated: February 25, 2010.

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19 EDMUND F. BRENNAN  
20 UNITED STATES MAGISTRATE JUDGE  
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IN THE UNITED STATES DISTRICT COURT  
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CHANTHON BUN,

Plaintiff,

No. CIV S-09-0631 EFB P

vs.

T. FELKER, et al.,

Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

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Plaintiff hereby submits the following documents in compliance with the court's order  
filed \_\_\_\_\_:

- 1 completed summons form
- 15 completed forms USM-285
- 16 copies of the March 6, 2009 Amended Complaint

Dated:

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Plaintiff