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

ANTHONY DILL,

Plaintiff,

No. CIV S-09-0887 EFB P

vs.

J. POTTS, et al.,

Defendants.

ORDER

_____ /

Plaintiff is confined in a county jail and is proceeding without counsel in an action brought under 42 U.S.C. §1983. He seeks leave to proceed *in forma pauperis*. See 28 U.S.C. § 1915(a). This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff’s declaration makes the showing required by 28 U.S.C. § 1915(a)(1) and (2).

Plaintiff must pay the \$350 filing fee. See 28 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff must make monthly payments of 20 percent of the preceding month’s income credited to his trust account. See 28 U.S.C. § 1915(b)(2). The agency having custody of plaintiff shall forward payments from plaintiff’s account to the Clerk of the Court each time the amount in the account exceeds \$10 until the filing fee is paid.

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1 The court has reviewed plaintiff's complaint and, for the limited purposes of § 1915A
2 screening, finds that it states cognizable Fourth Amendment claims of excessive force against
3 defendants Potts, Greenberg, Iacono, Jensen, and Whitney. See 28 U.S.C. § 1915A. The
4 complaint does not state any other cognizable claims against these defendants, nor does it state a
5 cognizable claim against defendants Badoua, Rodriguez or Yates.

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

7 Every person who, under color of [state law] . . . subjects, or causes to be
8 subjected, any citizen of the United States . . . to the deprivation of any rights,
9 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

10 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
11 establish the defendant's personal involvement in the constitutional deprivation or a causal
12 connection between the defendant's wrongful conduct and the alleged constitutional deprivation.
13 See *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
14 (9th Cir. 1978). Plaintiff may not sue any supervisor on a theory that the supervisor is liable for
15 the acts of his or her subordinates. See *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). A
16 supervisor may be held liable in his or her individual capacity "for his own culpable action or
17 inaction in the training, supervision or control of his subordinates." *Watkins v. City of Oakland*,
18 *Cal.*, 145 F.3d 1087, 1093 (9th Cir. 1998) (quoting *Larez v. City of Los Angeles*, 946 F.2d 630,
19 646 (9th Cir. 1991)). To state a claim against any individual defendant, the plaintiff must allege
20 facts showing that the individual defendant participated in or directed the alleged violation, or
21 knew of the violation and failed to act to prevent it. See *Barren v. Harrington*, 152 F.3d 1193,
22 1194 (9th Cir. 1998), *cert. denied*, 525 U.S. 1154 (1999) ("A plaintiff must allege facts, not
23 simply conclusions, that show that an individual was personally involved in the deprivation of
24 his civil rights."); *Taylor*, 880 F.2d at 1045.

25 Plaintiff alleges that defendants Potts, Greenberg, Iacono, Jensen, and Whitney used
26 excessive force against him on March 6, 2009, when he was surrendering to the police. Plaintiff

1 also alleges that these defendants robbed plaintiff of his money and “entered the residence
2 unannounced as well!” Compl. ¶ IV.

3 Plaintiff does not include any allegations against defendants Badoua, Rodriguez or Yates.
4 Since plaintiff fails to link defendants Badoua, Rodriguez or Yates to any act or omission that
5 would indicate a deprivation of plaintiff’s federal rights, plaintiff fails to state a section 1983
6 claim against them.

7 To the extent plaintiff intends to state a claim in addition to his excessive force claim,
8 against defendants Potts, Greenberg, Iacono, Jensen, and Whitney, he fails to do so. An
9 unauthorized taking of property does not violate the due process clause of the Fourteenth
10 Amendment when, as here, state law provides an adequate post deprivation remedy. *Hudson v.*
11 *Palmer*, 468 U.S. 517, 533 (1984); *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994)
12 (holding that Cal. Gov’t Code § 810 provides such a remedy). Therefore, plaintiff’s allegations
13 of being “robbed” do not state a cognizable claim. Additionally, plaintiff’s allegation that
14 defendants entered “the residence” unannounced, fails to state a claim. While the Fourth
15 Amendment proscribes “unreasonable searches and seizures,” U.S. Const. amend. IV, plaintiff’s
16 allegations do not suggest that defendants’ entry into the residence was unreasonable. *See*
17 *Hudson v. Michigan*, 547 U.S. 586, 597-98 (2006) (proper remedy for a failure to knock and
18 announce is a section 1983 action); *Wilson v. Arkansas*, 514 U.S. 927, 934 (1995)
19 (knock-and-announce principle is part of Fourth Amendment reasonableness inquiry). Nor does
20 plaintiff suggest he had a reasonable expectation of privacy in the residence, as he does not
21 allege that the residence was his or that he had joint control and supervision of it. *See United*
22 *States v. Broadhurst*, 805 F.2d 849, 851-52 (9th Cir. 1986).

23 Therefore, plaintiff may proceed forthwith to serve defendants Potts, Greenberg, Iacono,
24 Jensen, and Whitney and pursue his excessive force claims against these defendants only.
25 Alternatively, plaintiff may delay serving any defendant and attempt to state additional
26 cognizable claims against Potts, Greenberg, Iacono, Jensen, and Whitney, and/or cognizable

1 claims against defendants Badoua, Rodriguez or Yates.

2 If plaintiff elects to attempt to amend his complaint to state additional cognizable claims
3 and/or add defendants, he has 30 days so to do. He is not obligated to amend his complaint.

4 However, if plaintiff elects to proceed forthwith against defendants Potts, Greenberg, Iacono,
5 Jensen, and Whitney, against whom he has stated a cognizable claim of excessive force, then
6 within 20 days he must return materials for service of process enclosed herewith. In this event
7 the court will construe plaintiff's election as consent to dismissal without prejudice of all
8 remaining claims against defendants Potts, Greenberg, Iacono, Jensen, and Whitney as well as
9 plaintiff's claims against defendants Badoua, Rodriguez or Yates.

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

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

23 The federal rules contemplate brevity. *See Galbraith v. County of Santa Clara*, 307 F.3d
24 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any
25 heightened pleading standard in cases other than those governed by Rule 9(b)."); Fed. R. Civ. P.
26 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be

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

16 A district court must construe a pro se pleading “liberally” to determine if it states a
17 claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an
18 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While
19 detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of
20 action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct.
21 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff
22 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
23 plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). While
24 factual allegations are accepted as true, legal conclusions are not. *Iqbal*, 129 S.Ct. at 1949.

25 An amended complaint must be complete in itself without reference to any prior
26 pleading. Local Rule 15-220; *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 excessive force claims
17 against defendants Potts, Greenberg, Iacono, Jensen, and Whitney.

18 Accordingly, the court hereby orders that:

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

20 2. Plaintiff is must pay the statutory filing fee of \$350 for this action. All payments shall
21 be collected and paid in accordance with the notice to the Director of the Solano County
22 Sheriff’s Office filed concurrently herewith.

23 3. With the exception of the excessive force claims, all claims against defendants Potts,
24 Greenberg, Iacono, Jensen, and Whitney, as well as plaintiff’s claims against defendants Badoua,
25 Rodriguez or Yates, are dismissed with leave to amend. Within 30 days of service of this order,
26 plaintiff may amend his complaint to attempt to state cognizable claims against these defendants.

1 Plaintiff is not obliged to amend his complaint.

2 4. The allegations in the pleading are sufficient at least to state cognizable excessive
3 force claims against defendants Potts, Greenberg, Iacono, Jensen, and Whitney. *See* 28 U.S.C.
4 § 1915A. With this order the Clerk of the Court shall provide to plaintiff a blank summons, a
5 copy of the pleading filed April 1, 2009, five USM-285 forms and instructions for service of
6 process on defendants Potts, Greenberg, Iacono, Jensen, and Whitney. Within 20 days of service
7 of this order plaintiff may return the attached Notice of Submission of Documents with the
8 completed summons, the completed USM-285 forms, and six copies of the April 1, 2009
9 complaint. The court will transmit them to the United States Marshal for service of process
10 pursuant to Fed. R. Civ. P. 4. Defendants Potts, Greenberg, Iacono, Jensen, and Whitney will be
11 required to respond to plaintiff's allegations within the deadlines stated in Fed. R. Civ. P.
12 12(a)(1). In this event, the court will construe plaintiff's election to proceed forthwith as consent
13 to an order dismissing, without prejudice, his defective claims as summarized in paragraph three
14 of this order.

15 Dated: September 2, 2009.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY DILL,

Plaintiff,

No. CIV S-09-887 EFB P

vs.

J. POTTS, et al.,

Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

_____ /

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

- 1 completed summons form
- 5 completed forms USM-285
- 6 copies of the April 1, 2009 Complaint

Dated:

Plaintiff