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

LARRY W. KIRK,

No. CIV S-09-1866-CMK-P

Plaintiff,

vs.

ORDER

R.J. RACKLEY, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain

1 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).  
2 This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,  
3 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied  
4 if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon  
5 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must  
6 allege with at least some degree of particularity overt acts by specific defendants which support  
7 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
8 impossible for the court to conduct the screening required by law when the allegations are vague  
9 and conclusory.

#### 10 **I. PLAINTIFF’S ALLEGATIONS**

11 Plaintiff alleges he informed the correctional officers at Deuel Vocational  
12 Institution (DVI) that he was having difficulties with his cellmate. He put in several requests for  
13 his cellmate to be moved, which apparently were not acted upon. He specifically requested a  
14 conference with one correctional officer, but was told that the correctional officer was not at his  
15 normal post, and was not willing to hear Plaintiff’s complaint. On that same day, Plaintiff and  
16 his cellmate had a confrontation which resulted in prison disciplinary proceedings. Plaintiff  
17 states he was placed in the secured housing unit (SHU), where he has remained following the  
18 ICC committee finding that he was guilty of fighting and had a documented enemy. He argues  
19 that he has signed the necessary paperwork indicating that he is not claiming a documented  
20 enemy, but apparently his old cellmate is claiming enemy status. Due to his cellmate’s claim that  
21 they are enemies, Plaintiff is being retained in the SHU.

22 The defendants Plaintiff has named in this action are: R.J. Rackley, Chief Deputy  
23 Warden at DVI; Salinas, Warden of DVI; Mathew Cate, Director of California Department of  
24 Corrections and Rehabilitation; and “John & Jane Does, to be added as their names become  
25 available.” He alleges that defendant Rackley was a member of the ICC committee, but has not  
26 alleged any facts related to defendants Salinas or Cate.

1 **II. DISCUSSION**

2 It appears that Plaintiff is claiming that he was unjustly found guilty of fighting  
3 with his cellmate and having a documented enemy, and is inappropriately housed in the SHU.<sup>1</sup>  
4 He also appears to be claiming the unnamed correctional officers failed to protect him from his  
5 cellmate. To the extent these are his claims, the court finds that his complaint appears to state a  
6 cognizable claim for relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the  
7 allegations are proven, plaintiff has a reasonable opportunity to prevail on the merits of this  
8 action.

9 However, there also appear to be some deficiencies in his complaint which need  
10 to be addressed. First, Plaintiff has named three individual defendants as well as “Doe”  
11 defendants. The only individual defendant Plaintiff makes specific allegations against is  
12 Rackley, who he alleges was a member of the ICC committee that decided to house him in the  
13 SHU. He makes no allegations as to defendant Salinas or Cate.

14 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual  
15 connection or link between the actions of the named defendants and the alleged deprivations.  
16 See Monell v. Dep’t of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
17 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
18 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts, or  
19 omits to perform an act which he is legally required to do that causes the deprivation of which  
20 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and  
21 conclusory allegations concerning the involvement of official personnel in civil rights violations  
22 are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the  
23 plaintiff must set forth specific facts as to each individual defendant’s causal role in the alleged

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25 <sup>1</sup> Housing in the SHU appears to be the only result from the challenged disciplinary  
26 proceeding. There is nothing in the complaint to indicate the disciplinary proceedings had any  
affect on the duration of Plaintiff’s sentence. See Ramirez v. Galaza, 334 F.3d 850, 858 (9th  
Cir. 2003)

1 constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

2           In addition, these two defendants appear to be supervisory personnel, namely the  
3 Warden and CDCR Secretary. Supervisory personnel are generally not liable under § 1983 for  
4 the actions of their employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding  
5 that there is no respondeat superior liability under § 1983). A supervisor is only liable for the  
6 constitutional violations of subordinates if the supervisor participated in or directed the  
7 violations. See id. The Supreme Court has rejected the notion that a supervisory defendant can  
8 be liable based on knowledge and acquiescence in a subordinate’s unconstitutional conduct  
9 because government officials, regardless of their title, can only be held liable under § 1983 for  
10 his or her own conduct and not the conduct of others. See Ashcroft v. Iqbal, 129 S. Ct. 1937,  
11 1949 (2009). When a defendant holds a supervisory position, the causal link between such  
12 defendant and the claimed constitutional violation must be specifically alleged. See Fayle v.  
13 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.  
14 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel  
15 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th  
16 Cir. 1982). “[A] plaintiff must plead that each Government-official defendant, through the  
17 official’s own individual actions, has violated the constitution.” Iqbal, 129 S. Ct. at 1948.

18           As Plaintiff fails to allege any involvement of either defendant Cate or Salinas, it  
19 appears these two individuals should be dismissed from this action. Plaintiff will therefore be  
20 required to show cause in writing, within 30 days of the date of this order, why these two  
21 defendants should not be dismissed from this action for failure to state a claim. Plaintiff is  
22 warned that failure to respond to this order may result in the dismissal of these defendants. See  
23 Local Rule 11-110.

24           In addition, Plaintiff has named “Doe” defendants. The potential “Doe”  
25 defendants appear to be related to his claim of failure to protect. Doe defendants are not favored  
26 in the Ninth Circuit as a general policy. See Gillespie v. Civiletti, 629 F.2d 637, 642 (9th

1 Cir.1980); Velasquez v. Senko 643 F. Supp. 1172, 1180 (N.D. Cal.1986). However, there are  
2 situations where the identity of alleged defendants cannot be known at the time the complaint is  
3 filed. "In such circumstances, the plaintiff should be given an opportunity through discovery to  
4 identify the unknown defendants, unless it is clear that discovery would not uncover the  
5 identities, or that the complaint would be dismissed on other grounds." Gillespie, 629 F.2d at  
6 642 (citing Gordon v. Leeke, 574 F.2d 1147, 1152 (4th Cir.1978), cert. denied, 439 U.S. 970  
7 (1978); Wells Fargo & Co. v. Wells Fargo Express Co., 556 F.2d 406, 430-431 n.24 (9th  
8 Cir.1977); Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 n.13(1978)).

9           Upon discovering the name of the "Doe" defendants, or any of them, plaintiff  
10 must promptly file a motion for leave to amend, accompanied by a proposed amended complaint  
11 identifying the additional defendant or defendants. Plaintiff is cautioned that undue delay in  
12 discovering the "Doe" defendants' names and seeking leave to amend may result in the denial of  
13 leave to proceed against these defendants.

### 14                                   **III. CONCLUSION**

15           The complaint appears to state a cognizable claim for relief, pursuant to 42 U.S.C.  
16 § 1983 and 28 U.S.C. § 1915A(b), against defendant Rackley. If the allegations are proven,  
17 plaintiff has a reasonable opportunity to prevail on the merits of this action. The court, therefore,  
18 finds that service is appropriate as to defendant Rackley, and will direct service by the U.S.  
19 Marshal without pre-payment of costs. However, Plaintiff is responsible for providing sufficient  
20 information to serve the defendant(s). See Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir.  
21 1994) (abrogated on other grounds). Plaintiff is therefore informed that this action cannot  
22 proceed further until plaintiff provides the court with the necessary service documents, as  
23 identified below.

24           In addition, as discussed above, Plaintiff's complaint fails to state a claim against  
25 either defendant Cate or Salinas, and it appears these two individuals should be dismissed from  
26 this action. If Plaintiff fails to show cause, within the time frame set forth in this order, as to why

1 these defendants should not be dismissed from this action for failure to state a claim, the court  
2 will dismiss these two defendants, by separate order, and this case will proceed against defendant  
3 Rackley only.

4 Plaintiff is warned that failure to comply with all of the requirements set forth in  
5 this order, may result in dismissal of the action for the reasons outlined. See Local Rule 11-110.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. The court authorizes service on the following defendant(s):

8 R.J. RACKLEY

9 2. The Clerk of the Court shall send plaintiff one USM-285 form for each  
10 defendant identified above, one summons, an instruction sheet, and a copy of the complaint;

11 3. Within 30 days of the date of service of this order, plaintiff shall complete  
12 the attached Notice of Submission of Documents and submit the following documents to the  
13 court:

14 a. The completed Notice of Submission of Documents;

15 b. One completed summons;

16 c. One completed USM-285 form(s); and

17 d. Two copies of the endorsed complaint; and

18 4. Plaintiff shall show cause in writing, within 30 days of the date of this  
19 order, why defendants Cate and Salinas should not be dismissed from this case for failure to state  
20 a claim against them.

21  
22 DATED: December 16, 2009

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24 **CRAIG M. KELLISON**  
25 UNITED STATES MAGISTRATE JUDGE  
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Plaintiff,

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Defendants.

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NOTICE OF SUBMISSION OF DOCUMENTS

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

- 1   completed summons form;
- \_\_\_\_\_ completed USM-285 form(s); and
- \_\_\_\_\_ copies of the complaint.

DATED: \_\_\_\_\_

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Plaintiff