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

JOSEPH JOHNSON,

Plaintiff,

No. 2:09-cv-2103 JFM (PC)

vs.

M. MARTEL, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly

1 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust
2 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court
3 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28
4 U.S.C. § 1915(b)(2).

5 The Civil Rights Act under which this action was filed provides as follows:

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

11 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
12 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
13 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
14 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the
15 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
16 omits to perform an act which he is legally required to do that causes the deprivation of which
17 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

18 Moreover, supervisory personnel are generally not liable under § 1983 for the
19 actions of their employees under a theory of respondeat superior and, therefore, when a named
20 defendant holds a supervisory position, the causal link between him and the claimed
21 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
22 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
23 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
24 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
25 Cir. 1982).

26 Although plaintiff names Warden M. Martel as a defendant herein, the complaint
contains no charging allegations as to defendant Warden. Accordingly, the court will not order
service of process on this defendant.

1 As to the remaining defendants, the complaint states a cognizable claim for relief
2 pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are
3 proven, plaintiff has a reasonable opportunity to prevail on the merits of this action.

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

6 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

7 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
8 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
9 Director of the California Department of Corrections and Rehabilitation filed concurrently
10 herewith.

11 3. Service is appropriate for the following defendants: G. Bishop and R.M.
12 Kudlata.

13 4. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons,
14 an instruction sheet and a copy of the complaint filed July 30, 2009.

15 5. Within thirty days from the date of this order, plaintiff shall complete the
16 attached Notice of Submission of Documents and submit the following documents to the court:

17 a. The completed Notice of Submission of Documents;

18 b. One completed summons;

19 c. One completed USM-285 form for each defendant listed in number 3
20 above; and

21 d. Three copies of the endorsed complaint filed July 30, 2009.

22 6. Plaintiff need not attempt service on defendants and need not request waiver of
23 service. Upon receipt of the above-described documents, the court will direct the United States

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1 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
2 without payment of costs.

3 DATED: August 18, 2009.

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6 UNITED STATES MAGISTRATE JUDGE

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

JOSEPH JOHNSON,

Plaintiff,

No. 2:09-cv-2103 JFM (PC)

vs.

M. MARTEL, et al.,

Defendants.

NOTICE OF SUBMISSION
OF DOCUMENTS

_____ /

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

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Complaint

DATED:

Plaintiff