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

STEPHEN BERRY,

Plaintiff,

No. CIV S-10-0051 MCE EFB P

vs.

S.M. SALINAS, et al.,

Defendants.

ORDER

_____/

Stephen Berry, an inmate confined at Deuel Vocational Institute, filed this pro se civil rights action under 42 U.S.C. § 1983. Plaintiff’s complaint concerns events alleged to have occurred while he was housed at Deuel Vocational Institute. In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

I. Request to Proceed In Forma Pauperis

Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Dckt. No. 5, 9. Plaintiff’s application 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).

1 **II. Screening Order**

2 Pursuant to 28 U.S.C. § 1915A, the court shall review “a complaint in a civil action in
3 which a prisoner seeks redress from a governmental entity or officer or employee of a
4 governmental entity.” 28 U.S.C. § 1915A(a). “On review, the court shall identify cognizable
5 claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous,
6 malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief
7 from a defendant who is immune from such relief.” *Id.* § 1915A(b).

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

16 A claim has facial plausibility when the plaintiff pleads factual content that allows
17 the court to draw the reasonable inference that the defendant is liable for the
18 misconduct alleged. The plausibility standard is not akin to a “probability
19 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.

20 *Id.* (citations and quotation marks omitted). Although legal conclusions can provide the
21 framework of a complaint, they must be supported by factual allegations, and are not entitled to
22 the assumption of truth. *Id.* at 1950.

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

24 Every person who, under color of [state law] . . . subjects, or causes to be
25 subjected, any citizen of the United States . . . to the deprivation of any rights,
26 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

1 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
2 establish the defendant's personal involvement in the constitutional deprivation or a causal
3 connection between the defendant's wrongful conduct and the alleged constitutional deprivation.
4 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
5 (9th Cir. 1978)

6 The court has reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A and finds it
7 does not state a cognizable claim. Plaintiff names the following defendants: S.M. Salinas
8 (warden); Rackley (chief deputy warden); Bennet (correctional food manager); Chavez (assistant
9 correctional food manager); Haskell (supervising correctional food cook); Buffa (correctional
10 baker II); and Russell (appeals coordinator). Plaintiff alleges that on May 13, 2009, he was
11 injured while working in the bakery shop as his institution because an industrial high speed
12 mixer was not functioning properly. Plaintiff alleges that as a result, two of his fingers had to be
13 amputated. According to plaintiff, the "mixer equipment had previous work orders for not
14 working properly" and "should have been offline to use by bakery staff until fixed" Dckt.
15 No. 1 at 5. Plaintiff claims that defendant Russell, in processing plaintiff's inmate appeals, was
16 arrogant and blamed plaintiff for the accident. Plaintiff further claims that defendant Buffa did
17 not give plaintiff a copy of his worker's compensation form. Plaintiff asserts that defendants
18 violated his Eighth Amendment rights, as well as due process rights, by failing to file and
19 process an accident report and by causing plaintiff to lose his right to file a claim with the
20 Worker's Compensation Board.

21 "The Eighth Amendment's prohibition against cruel and unusual punishment protects
22 prisoners not only from inhumane methods of punishment but also from inhumane conditions of
23 confinement." *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006). Extreme
24 deprivations are required to make out a conditions of confinement claim, and only those
25 deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to
26 form the basis of an Eighth Amendment violation. *Hudson v. McMillian*, 503 U.S. 1, 9 (1992).

1 Where a prisoner alleges injuries stemming from unsafe conditions of confinement, prison
2 officials may be held liable only if they acted with “deliberate indifference to a substantial risk of
3 serious harm.” *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998); *Farmer v. Brennan*, 511
4 U.S. 825, 847 (1994). Mere negligence is insufficient to establish deliberate indifference since
5 “Eighth Amendment liability requires ‘more than ordinary lack of due care for the prisoner’s
6 interests or safety.’” *Farmer*, 511 U.S. at 835 (quoting *Whitley v. Albers*, 475 U.S. 312, 319
7 (1986)).

8 Plaintiff’s allegations regarding the faulty mixer in the prison’s bakery fall short of
9 stating an Eighth Amendment claim because they do not demonstrate that defendants acted with
10 deliberate indifference to plaintiff’s safety needs. Plaintiff’s allegations must be sufficient to
11 support a plausible claim for relief, which requires more than the mere possibility of misconduct.
12 *Iqbal*, 129 S.Ct. at 1949. Plaintiff’s very general and conclusory allegation that “defendants”
13 failed to provide a safe working environment by not fixing the mixer, do not support an Eighth
14 Amendment claim. Plaintiff does not provide any factual allegations as to which specific
15 defendants knew or should have known that the mixer was not functioning and/or presented an
16 unsafe condition for plaintiff. Notwithstanding the alleged severity of plaintiff’s injury, plaintiff
17 fails to state a cognizable Eighth Amendment claim. This claim is dismissed with leave to
18 amend.

19 Plaintiff’s due process claim is based on “defendants’” alleged failure “to file and process
20 the adequate reports/paperwork to the various agencies and provide plaintiff with copies/proof
21 thereof.” Dckt. No. 1 at 7. Plaintiff’s only specific allegations are that defendant Buffa did not
22 give plaintiff a copy of the worker’s compensation form and that defendants Haskell and Bennet
23 stated that a “report” of some sort had been filed, but failed to give plaintiff any copies. Dckt.
24 No. 1 at 6, 8. Plaintiff also alleges that as a result of defendants’ actions he “lost all rights to file
25 a claim for compensation with workmens comp board . . .and other administrative remedies.” *Id.*
26 at 8. The court cannot say, based on plaintiff’s conclusory allegations, that he has stated a

1 cognizable due process claim, but will grant plaintiff leave to amend. If plaintiff chooses to
2 amend this claim, he must include more specific allegations that link individual defendants to
3 specific acts or omissions that led to a purported violation of plaintiff's constitutional rights.

4 To the extent plaintiff intends to impose liability against defendant Russell based on his
5 handling of plaintiff's administrative appeals, plaintiff fails to state a cognizable due process
6 claim. Plaintiff may not impose liability on a defendant simply he played a role in processing
7 plaintiff's inmate appeals, as there are no constitutional requirements regarding how a grievance
8 system is operated. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding that
9 prisoner's claimed loss of a liberty interest in the processing of his appeals does not violate due
10 process because prisoners lack a separate constitutional entitlement to a specific prison grievance
11 system).

12 Additionally, plaintiff may not sue any supervisor on a theory that the supervisor is liable
13 for the acts of his or her subordinates. *See Polk County v. Dodson*, 454 U.S. 312, 325 (1981). A
14 supervisor may be held liable in his or her individual capacity "for his own culpable action or
15 inaction in the training, supervision or control of his subordinates." *Watkins v. City of Oakland,*
16 *Cal.*, 145 F.3d 1087, 1093 (9th Cir. 1998) (quoting *Larez v. City of Los Angeles*, 946 F.2d 630,
17 646 (9th Cir. 1991)). "A supervisor is only liable for constitutional violations of his subordinates
18 if the supervisor participated in or directed the violations, or knew of the violations and failed to
19 act to prevent them." *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

20 To proceed plaintiff must file an amended complaint. Any amended complaint must
21 adhere to the following requirements:

22 It must be complete in itself without reference to any prior pleading. E.D. Cal. Local
23 Rule 220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended
24 complaint, the original pleading is superseded.

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1 It must show that the federal court has jurisdiction and that plaintiff’s action is brought in
2 the right place, that plaintiff is entitled to relief if plaintiff’s allegations are true, and must
3 contain a request for particular relief. Plaintiff must identify as a defendant only persons who
4 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.
5 *Johnson*, 588 F.2d at 743 (a person subjects another to the deprivation of a constitutional right if
6 he does an act, participates in another’s act or omits to perform an act he is legally required to do
7 that causes the alleged deprivation).

8 It must contain a caption including the name of the court and the names of all parties.
9 Fed. R. Civ. P. 10(a).

10 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.
11 P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences,
12 the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join
13 multiple claims if they are all against a single defendant. Fed. R. Civ. P. 18(a). Unrelated claims
14 against different defendants must be pursued in multiple lawsuits. “The controlling principle
15 appears in Fed. R. Civ. P. 18(a): ‘A party asserting a claim . . . may join, [] as independent or as
16 alternate claims, as many claims . . . as the party has against an opposing party.’ Thus multiple
17 claims against a single party are fine, but Claim A against Defendant 1 should not be joined with
18 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in
19 different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit
20 produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation
21 Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file
22 without prepayment of the required fees. 28 U.S.C. § 1915(g).” *George v. Smith*, 507 F.3d 605,
23 607 (7th Cir. 2007); *see also* Fed. R. Civ. P. 20(a)(2) (joinder of defendants not permitted unless
24 both commonality and same transaction requirements are satisfied). Plaintiff may not change the
25 nature of this suit by alleging new, unrelated claims in an amended complaint. *George*, 507 F.3d
26 at 607 (no “buckshot” complaints).

1 The allegations must be short and plain, simple and direct and describe the relief plaintiff
2 seeks. Fed. R. Civ. P. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v.*
3 *County of Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002). A long, rambling pleading,
4 including many defendants with unexplained, tenuous or implausible connection to the alleged
5 constitutional injury or joining a series of unrelated claims against many defendants very likely
6 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing
7 plaintiff’s action pursuant to Rule 41 of the Federal Rules of Civil Procedure for violation of
8 these instructions.

9 Plaintiff must sign the complaint. Fed. R. Civ. P. 11(a). By signing an amended
10 complaint, plaintiff certifies he has made reasonable inquiry and has evidentiary support for his
11 allegations and that for violation of this rule the court may impose sanctions sufficient to deter
12 repetition by plaintiff or others. Fed. R. Civ. P. 11.

13 A prisoner may bring no § 1983 action until he has exhausted such administrative
14 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. *Booth*
15 *v. Churner*, 532 U.S. 731, 741 (2001). By signing an amended complaint plaintiff certifies his
16 claims are warranted by existing law, including the law that he exhaust administrative remedies,
17 and that for violation of this rule plaintiff risks dismissal of his entire action

18 Accordingly, the court hereby orders that:

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

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

23 3. The complaint is dismissed with leave to amend within 30 days. The amended
24 complaint must bear the docket number assigned to this case and be titled “First Amended

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1 Complaint.” Failure to comply with this order will result in a recommendation that this action be
2 dismissed. If plaintiff files an amended complaint stating a cognizable claim the court will
3 proceed with service of process by the United States Marshal.

4 Dated: June 23, 2010.

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6 EDMUND F. BRENNAN
7 UNITED STATES MAGISTRATE JUDGE
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