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

THOMAS PAUL WYNN,

Plaintiff,

No. CIV S-10-0546 EFB P

vs.

MATTHEW CATE, et. al.,

Defendants.

ORDER

\_\_\_\_\_/

Thomas Paul Wynn, an inmate confined at Mule Creek State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. 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) and is before the undersigned pursuant to plaintiff’s consent. *See* E.D. Cal. Local Rules, Appx. A, at (k)(4).

**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. 2. 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 The court has reviewed plaintiff’s complaint and, for the limited purposes of § 1915A  
9 screening, finds that it states a cognizable Eighth Amendment claim against defendant Casillas.

10 For the reasons stated below, the complaint does not state a cognizable claim against  
11 Smith, Leatherman, Merritt, Cooper, Lackner, Palubicki, Grannis, Martel, Wilson, Thompson,  
12 Kaplan, Barroga, Cate, and Tilton. These claims will therefore be dismissed with leave to  
13 amend.

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

22 A claim has facial plausibility when the plaintiff pleads factual content that allows  
23 the court to draw the reasonable inference that the defendant is liable for the  
24 misconduct alleged. The plausibility standard is not akin to a “probability  
25 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.

26 *Id.* (citations and quotation marks omitted). Although legal conclusions can provide the

1 framework of a complaint, they must be supported by factual allegations, and are not entitled to  
2 the assumption of truth. *Id.* at 1950.

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
4 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
5 the alleged violation was committed by a person acting under the color of state law. *West v.*  
6 *Atkins*, 487 U.S. 42, 48 (1988). An individual defendant is not liable on a civil rights claim  
7 unless the facts establish the defendant’s personal involvement in the constitutional deprivation  
8 or a causal connection between the defendant’s wrongful conduct and the alleged constitutional  
9 deprivation. *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d  
10 740, 743-44 (9th Cir. 1978).

11 Plaintiff alleges that he was pepper sprayed while complying with orders, without  
12 provocation or justification, by defendant Casillas. For the purposes of this initial review,  
13 plaintiff has made out an Eighth Amendment claim against Casillas.

14 He also alleges that defendants Merritt and Smith “set into motion a chain of events” that  
15 lead to the spraying. However, plaintiff does not allege that these defendants violated his  
16 constitutional rights by causing or by failing to intervene in the pepper spraying. On the  
17 contrary, he states that “Casillas continued to spray and spray some more . . . Merritt, after  
18 sharing perplexing glances with Leatherman, pushed his alarm.” As plaintiff has not alleged that  
19 Merritt and Smith participated or aided in the pepper spraying, he has failed to state an Eighth  
20 Amendment claim against them.

21 Plaintiff further alleges that defendants Casillas, Smith, Leatherman, Merritt, and Cooper  
22 conspired to cover up the use of excessive force after the spraying. He alleges that Cooper  
23 coached the other defendants on how to falsify their incident reports so as to minimize liability.

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1 Plaintiff alleges that, on the basis of these false reports, he was charged with a rules violation for  
2 “assault on staff.” He was initially found guilty, but the decision was reversed because of  
3 violations<sup>1</sup> by the Chief Disciplinary Officer, Lackner. The charge was then reheard, and he was  
4 once more found guilty. Plaintiff alleges that at the second hearing, Palubicki, the hearing  
5 officer, stated “You are in blue and c/o Casillas wears green, therefore, no matter how many  
6 witnesses you call, I am still finding you guilty.” Plaintiff alleges that, as he is a life prisoner, it  
7 may harm him to have a rule violation report of violent behavior in his file when he is up for a  
8 parole suitability determination.

9 Prisoners have no constitutionally guaranteed right to be free from false accusations of  
10 misconduct, so the mere falsification of the reports does not give rise to a claim under § 1983.  
11 *See Sprouse v. Babcock*, 870 F.2d 450, 452 (8th Cir. 1989); *Freeman v. Rideout*, 808 F.2d 949,  
12 952 (2nd Cir. 1986). Moreover, prisoners do not always have a liberty interest in internal  
13 disciplinary proceedings. State statutes and prison regulations may grant prisoners liberty  
14 interests sufficient to invoke due process protections. *Meachum v. Fano*, 427 U.S. 215 (1976).  
15 However, pursuant to *Sandin v. Conner*, 515 U.S. 472, 483 (1995), a prisoner can show a liberty  
16 interest under the Due Process Clause of the Fourteenth Amendment only if he alleges a change  
17 in confinement that imposes an “atypical and significant hardship...in relation to the ordinary  
18 incidents of prison life.” *Id.* at 484; *Neal v. Shimoda*, 131 F.3d 818, 827-28 (9th Cir.1997).  
19 *Sandin* announced three factors useful in determining whether a plaintiff possesses a liberty  
20 interest in avoiding disciplinary segregation: (1) the disciplinary versus discretionary nature of  
21 the segregation; (2) the restricted conditions of the prisoner’s confinement and whether they  
22 amounted to a “major disruption in his environment” when compared to those shared by  
23 prisoners in the general population; and (3) the possibility of whether the prisoner’s sentence

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25 <sup>1</sup> Plaintiff was originally limited at the hearing to calling only one inmate witness to the  
26 incident, although he has submitted declarations from a number of inmate witnesses supporting  
his story.

1 was lengthened by his restricted custody. 515 U.S. at 486-87. In this case, plaintiff does not  
2 explain whether he was placed in administrative segregation as a result of being found guilty of  
3 the rules violation, let alone whether the conditions in administrative segregation constituted an  
4 atypical and significant hardship. Although plaintiff does allege that the rules violation report  
5 may reduce his chances of being paroled, this factor alone does not meet the *Sandin* test.  
6 Accordingly, his due process claims against Casillas, Smith, Leatherman, Merritt, Cooper and  
7 Palubicki must be dismissed with leave to amend to explain how plaintiff's liberty interests were  
8 violated.

9 Plaintiff alleges that defendants Grannis, Martel, Wilson, Thompson, Kaplan, Barroga,  
10 Lackner and Does violated his constitutional rights by denying consideration of his internal  
11 appeals. He claims that his appeals were first rejected because he was told that he could only  
12 attach one page. After he removed the evidence and witness declarations, his appeals were  
13 denied because "[t]he documentation and arguments presented are persuasive that the appellant  
14 has failed to support his appeal issue with sufficient evidence or facts," and "[t]he appellant has  
15 failed to submit any additional or new information at the Second Level of Review to warrant  
16 modification of the First Level Decision." There are no constitutional requirements regarding  
17 how a grievance system is operated. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003)  
18 (no liberty interest in processing of appeals because no entitlement to specific grievance  
19 procedure). Therefore, even if the internal appeals process was unfair, plaintiff's constitutional  
20 rights were not violated.

21 Plaintiff states that defendants Cate, Tilton, and Martel were responsible for the use-of-  
22 force policies. However, plaintiff has not claimed that Casillas was acting according to a use-of-  
23 force policy when he pepper sprayed plaintiff. Accordingly, the defendants who enacted the use-  
24 of-force policies did not cause plaintiff's injury.

25 Plaintiff also contends that Cate, Tilton, and Martel were responsible for training staff  
26 and investigating misconduct. There is no respondeat superior liability under § 1983. *Palmer v.*

1 *Sanderson*, 9 F.3d 1433, 1437-38 (9th Cir. 1993). That is, plaintiff may not sue any supervisor  
2 on a theory that the supervisor is liable for the acts of his or her subordinates. *See Polk County v.*  
3 *Dodson*, 454 U.S. 312, 325 (1981). “Because vicarious liability is inapplicable to . . . § 1983  
4 suits, a plaintiff must plead that each Government-official defendant, through the official’s own  
5 individual actions, has violated the Constitution.” *Iqbal*, 129 S. Ct. at 1948. A supervisor may  
6 be liable “for constitutional violations of his subordinates if the supervisor participated in or  
7 directed the violations, or knew of the violations and failed to act to prevent them.” *Taylor v.*  
8 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff has not alleged any facts explaining how  
9 Cate, Tilton, and Martel caused Casillas to be deficiently trained, and how their actions caused  
10 him to use excessive force during the pepper spraying incident. These claims must therefore be  
11 dismissed.

12 More specifically, plaintiff alleges that Sgt. Cooper “has known of” defendant Casillas’  
13 “long history of the use of excessive force.” However, plaintiff has failed to explain what  
14 Cooper knew, whether he could have commanded Casillas to behave differently, or how he  
15 failed to prevent the pepper-spraying incident.

16 Claims against these defendants must therefore be dismissed. Plaintiff may proceed  
17 forthwith to serve defendant Casillas and pursue his claims against only those defendants or he  
18 may delay serving any defendant and attempt to state a cognizable claim against Smith,  
19 Leatherman, Merritt, Cooper, Lackner, Palubicki, Grannis, Martel, Wilson, Thompson, Kaplan,  
20 Barroga, Cate, and Tilton.

21 If plaintiff elects to attempt to amend his complaint to state a cognizable claim against  
22 Smith, Leatherman, Merritt, Cooper, Lackner, Palubicki, Grannis, Martel, Wilson, Thompson,  
23 Kaplan, Barroga, Cate, and Tilton, he has 30 days so to do. He is not obligated to amend his  
24 complaint. However, if plaintiff elects to proceed forthwith against defendant Casillas, against  
25 whom he has stated a cognizable claim for relief, then within 30 days he must return materials  
26 for service of process enclosed herewith. In this event the court will construe plaintiff’s election

1 as consent to dismissal of all claims against defendants Smith, Leatherman, Merritt, Cooper,  
2 Lackner, Palubicki, Grannis, Martel, Wilson, Thompson, Kaplan, Barroga, Cate, and Tilton,  
3 without prejudice.

4 Any amended complaint must adhere to the following requirements:

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

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

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

17 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.  
18 P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences,  
19 the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join  
20 multiple claims if they are all against a single defendant. Fed. R. Civ. P. 18(a). Unrelated claims  
21 against different defendants must be pursued in multiple lawsuits. "The controlling principle  
22 appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim . . . may join, [] as independent or as  
23 alternate claims, as many claims . . . as the party has against an opposing party.' Thus multiple  
24 claims against a single party are fine, but Claim A against Defendant 1 should not be joined with  
25 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in  
26 different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit

1 produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation  
2 Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file  
3 without prepayment of the required fees. 28 U.S.C. § 1915(g).” *George v. Smith*, 507 F.3d 605,  
4 607 (7th Cir. 2007); *see also* Fed. R. Civ. P. 20(a)(2) (joinder of defendants not permitted unless  
5 both commonality and same transaction requirements are satisfied). Plaintiff may not change the  
6 nature of this suit by alleging new, unrelated claims in an amended complaint. *George*, 507 F.3d  
7 at 607 (no “buckshot” complaints).

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

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

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

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1 Accordingly, the court hereby orders that:

2 1. Plaintiff's request to proceed in forma pauperis is granted.

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

6 3. Claims against defendants Smith, Leatherman, Merritt, Cooper, Lackner, Palubicki,  
7 Grannis, Martel, Wilson, Thompson, Kaplan, Barroga, Cate, and Tilton are dismissed with leave  
8 to amend. Within 30 days of service of this order, plaintiff may amend his complaint to attempt  
9 to state cognizable claims against these defendants. Plaintiff is not obligated to amend his  
10 complaint.

11 4. The allegations in the pleading are sufficient at least to state cognizable claims against  
12 defendant Casillas. *See* 28 U.S.C. § 1915A. With this order the Clerk of the Court shall provide  
13 to plaintiff a blank summons, a copy of the complaint filed March 8, 2010, one USM-285 form  
14 and instructions for service of process on defendant Casillas. Within 30 days of service of this  
15 order plaintiff may return the attached Notice of Submission of Documents with the completed  
16 summons, the completed USM-285 forms, and two copies of the March 8, 2010 complaint. The  
17 court will transmit them to the United States Marshal for service of process pursuant to Rule 4 of  
18 the Federal Rules of Civil Procedure. Defendant Casillas will be required to respond to  
19 plaintiff's allegations within the deadlines stated in Rule 12(a)(1) of the Federal Rules of Civil  
20 Procedure. In this event, the court will construe plaintiff's election to proceed forthwith as  
21 consent to an order dismissing his defective claims against defendants Smith, Leatherman,  
22 Merritt, Cooper, Lackner, Palubicki, Grannis, Martel, Wilson, Thompson, Kaplan, Barroga,  
23 Cate, and Tilton without prejudice.

24 5. Failure to comply with this order will result in this action being dismissed.

25 Dated: October 19, 2010.

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EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE

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

THOMAS PAUL WYNN,

Plaintiff,

No. CIV S-10-0546 EFB P

vs.

MATTHEW CATE, et. al.,

Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

\_\_\_\_\_ /

In accordance with the court's order filed \_\_\_\_\_, plaintiff hereby elects to:

(1) \_\_\_\_\_ consent to the dismissal of defendants Smith, Leatherman, Merritt, Cooper, Lackner, Palubicki, Grannis, Martel, Wilson, Thompson, Kaplan, Barroga, Cate, and Tilton without prejudice, and submits the following documents:

- 1 completed summons form
- 1 completed forms USM-285
- 2 copies of the March 8, 2010 Complaint

**OR**

(2) \_\_\_\_\_ delay serving any defendant and files a first amended complaint in an attempt to state cognizable claims against defendants Smith, Leatherman, Merritt, Cooper, Lackner, Palubicki, Grannis, Martel, Wilson, Thompson, Kaplan, Barroga, Cate, and Tilton.

Dated:

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Plaintiff