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

MIDEL JACKSON,

Plaintiff,

No. CIV S-10-2070 EFB P

vs.

MATTHEW CATES, et al.,

Defendants.

ORDER

\_\_\_\_\_/

Midel Jackson, an inmate confined at High Desert 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. 6. 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 cognizable claims against defendants Cano, Zapata, Lopez, Della  
10 Cruz, Romero, Anices, Desimone, Zachariah, Petit, Palagummi, and Aquilizan.

11 For the reasons stated below, the complaint does not state a cognizable claim against  
12 defendants Matthew Cates, Furr, Fredrick, Parerra, Spangler, Colon, and Islas. These claims will  
13 therefore be dismissed with leave to 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). There is no respondeat superior liability under § 1983. *Palmer v.*  
11 *Sanderson*, 9 F.3d 1433, 1437-38 (9th Cir. 1993). That is, plaintiff may not sue any supervisor  
12 on a theory that the supervisor is liable for the acts of his or her subordinates. *See Polk County*  
13 *v. Dodson*, 454 U.S. 312, 325 (1981). "Because vicarious liability is inapplicable to . . . § 1983  
14 suits, a plaintiff must plead that each Government-official defendant, through the official's own  
15 individual actions, has violated the Constitution." *Iqbal*, 129 S. Ct. at 1948. A supervisor may  
16 be liable "for constitutional violations of his subordinates if the supervisor participated in or  
17 directed the violations, or knew of the violations and failed to act to prevent them." *Taylor v.*  
18 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

19 Although plaintiff has listed defendants Matthew Cates, Furr, Fredrick, Parerra, Spangler,  
20 Colon, and Islas as defendants, the complaint itself contains no factual allegations concerning  
21 these individuals, much less any allegations that they personally violated a right secured by the  
22 Constitution or laws of the United States. Claims against these defendants must therefore be  
23 dismissed.

24 Plaintiff may proceed forthwith to serve defendants Cano, Zapata, Lopez, Della Cruz,  
25 Romero, Anices, Desimone, Zachariah, Petit, Palagummi, and Aquilizan and pursue his claims  
26 against only those defendants or he may delay serving any defendant and attempt to state a

1 cognizable claim against defendants Matthew Cates, Furr, Fredrick, Parerra, Spangler, Colon,  
2 and Islas.

3 If plaintiff elects to attempt to amend his complaint to state a cognizable claim against  
4 defendants Matthew Cates, Furr, Fredrick, Parerra, Spangler, Colon, and Islas, he has 30 days so  
5 to do. He is not obligated to amend his complaint. However, if plaintiff elects to proceed  
6 forthwith against defendants Cano, Zapata, Lopez, Della Cruz, Romero, Anices, Desimone,  
7 Zachariah, Petit, Palagummi, and Aquilizan, against whom he has stated a cognizable claim for  
8 relief, then within 30 days he must return materials for service of process enclosed herewith. In  
9 this event the court will construe plaintiff's election as consent to dismissal of all claims against  
10 defendants Matthew Cates, Furr, Fredrick, Parerra, Spangler, Colon, and Islas without prejudice.

11 Any amended complaint must adhere to the following requirements:

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

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

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

24 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.  
25 P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences,  
26 the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join

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

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

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

1 A prisoner may bring no § 1983 action until he has exhausted such administrative  
2 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. *Booth*  
3 *v. Churner*, 532 U.S. 731, 741 (2001). By signing an amended complaint plaintiff certifies his  
4 claims are warranted by existing law, including the law that he exhaust administrative remedies,  
5 and that for violation of this rule plaintiff risks dismissal of his entire action, including his claims  
6 against defendants Cano, Zapata, Lopez, Della Cruz, Romero, Anices, Desimone, Zachariah,  
7 Petit, Palagummi, and Aquilizan.

8 Accordingly, the court hereby orders that:

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

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

13 3. Claims against defendants Matthew Cates, Furr, Fredrick, Parerra, Spangler, Colon,  
14 and Islas are dismissed with leave to amend. Within 30 days of service of this order, plaintiff  
15 may amend his complaint to attempt to state cognizable claims against these defendants.

16 Plaintiff is not obligated to amend his complaint.

17 4. The allegations in the pleading are sufficient at least to state cognizable claims against  
18 defendants Cano, Zapata, Lopez, Della Cruz, Romero, Anices, Desimone, Zachariah, Petit,  
19 Palagummi, and Aquilizan. *See* 28 U.S.C. § 1915A. With this order the Clerk of the Court shall  
20 provide to plaintiff a blank summons, a copy of the complaint filed August 4, 2010, eleven  
21 USM-285 forms and instructions for service of process on defendants Cano, Zapata, Lopez,  
22 Della Cruz, Romero, Anices, Desimone, Zachariah, Petit, Palagummi, and Aquilizan. Within 30  
23 days of service of this order plaintiff may return the attached Notice of Submission of  
24 Documents with the completed summons, the completed USM-285 forms, and twelve copies of  
25 the August 4, 2010 complaint. The court will transmit them to the United States Marshal for  
26 service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure. Defendants Cano,

1 Zapata, Lopez, Della Cruz, Romero, Anices, Desimone, Zachariah, Petit, Palagummi, and  
2 Aquilizan will be required to respond to plaintiff's allegations within the deadlines stated in Rule  
3 12(a)(1) of the Federal Rules of Civil Procedure. In this event, the court will construe plaintiff's  
4 election to proceed forthwith as consent to an order dismissing his defective claims against  
5 defendants Matthew Cates, Furr, Fredrick, Parerra, Spangler, Colon, and Islas without prejudice.

6 5. Failure to comply with this order will result in dismissal.

7 Dated: October 27, 2010.

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9 EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE

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

MIDEL JACKSON,

Plaintiff,

No. CIV S-10-2070 EFB P

vs.

MATTHEW CATES, 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 Matthew Cates, Furr, Fredrick, Parerra, Spangler, Colon, and Islas without prejudice, and submits the following documents:

- 1 completed summons form
- 11 completed forms USM-285
- 12 copies of the August 4, 2010 Complaint

**OR**

(2) \_\_\_\_\_ delay serving any defendant and files a first amended complaint in an attempt to state cognizable claims against defendants Matthew Cates, Furr, Fredrick, Parerra, Spangler, Colon, and Islas.

Dated:

\_\_\_\_\_  
Plaintiff