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

MARTIN SALADO,

Plaintiff,

No. 2:11-cv-0611 KJN P

vs.

D.K. SISTO, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding without counsel. 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 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 Plaintiff names Warden D.K. Sisto as a defendant in the caption and the
6 "defendants" portion of the complaint. However, plaintiff included no charging allegations as to
7 defendant Sisto in the complaint.

8 The Civil Rights Act under which this action was filed provides as follows:
9 Every person who, under color of [state law] . . . subjects, or causes
10 to be subjected, any citizen of the United States . . . to the
11 deprivation of any rights, privileges, or immunities secured by the
12 Constitution . . . shall be liable to the party injured in an action at
13 law, suit in equity, or other proper proceeding for redress.

14 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
15 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
16 Monell v. Department of Social Servs., 436 U.S. 658, 692 (1978) ("Congress did not intend
17 § 1983 liability to attach where . . . causation [is] absent."); Rizzo v. Goode, 423 U.S. 362 (1976)
18 (no affirmative link between the incidents of police misconduct and the adoption of any plan or
19 policy demonstrating their authorization or approval of such misconduct). "A person 'subjects'
20 another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an
21 affirmative act, participates in another's affirmative acts or omits to perform an act which he is
22 legally required to do that causes the deprivation of which complaint is made." Johnson v.
23 Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

24 Moreover, supervisory personnel are generally not liable under § 1983 for the
25 actions of their employees under a theory of respondeat superior and, therefore, when a named
26 defendant holds a supervisory position, the causal link between him and the claimed
constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
(9th Cir. 1979) (no liability where there is no allegation of personal participation; Mosher v.

1 Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979) (no liability where
2 there is no evidence of personal participation). Vague and conclusory allegations concerning the
3 involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board
4 of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of
5 personal participation is insufficient).

6 Finally, plaintiff has provided copies of his administrative appeals concerning the
7 allegations contained in the complaint. Booth v. Churner, 532 U.S. 731, 741 (2001) (prisoners
8 must first exhaust administrative remedies prior to bringing suit in federal court). Plaintiff did
9 not raise any claims implicating the warden in his administrative appeals; all of his allegations
10 were connected to defendants Rice and Conrad.

11 In light of the above, the court recommends that plaintiff's claims against
12 defendant Sisto be dismissed.

13 However, the complaint states a potentially cognizable claim for relief against
14 defendants Rice and Conrad pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the
15 allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the
16 merits of this action.

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

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

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

20 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
21 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
22 Director of the California Department of Corrections and Rehabilitation filed concurrently
23 herewith.

24 3. Service is appropriate for the following defendants: Rice and Conrad.

25 4. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons,
26 an instruction sheet and a copy of the complaint filed March 4, 2011.

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

- 3 a. The completed Notice of Submission of Documents;
4 b. One completed summons;
5 c. One completed USM-285 form for each defendant listed in number 3
6 above; and
7 d. Three copies of the endorsed complaint filed March 4, 2011.

8 6. Plaintiff need not attempt service on defendants and need not request waiver of
9 service. Upon receipt of the above-described documents, the court will direct the United States
10 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
11 without payment of costs.

12 7. The Clerk of the Court is directed to assign a district judge to this case; and
13 IT IS HEREBY RECOMMENDED that plaintiff's claims against defendant Sisto
14 be dismissed without prejudice.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
17 one days after being served with these findings and recommendations, plaintiff may file written
18 objections with the court. The document should be captioned "Objections to Magistrate Judge's
19 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
20 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
21 F.2d 1153 (9th Cir. 1991).

22 DATED: April 4, 2011

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25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE

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

MARTIN SALADO,

Plaintiff,

No. 2:11-cv-0611 KJN P

vs.

D.K. SISTO, 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