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

JOSE B. ZAVALA,

No. CIV S-11-2475-KJM-CMK-P

Plaintiff,

vs.

ORDER

MICHAEL D. McDONALD, et al.,

Defendants.

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Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied  
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon  
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must  
4 allege with at least some degree of particularity overt acts by specific defendants which support  
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
6 impossible for the court to conduct the screening required by law when the allegations are vague  
7 and conclusory.

### 9 I. PLAINTIFF'S ALLEGATIONS

10 Plaintiff names the following as defendants: Michael D. McDonald, warden; R.  
11 Gower, chief deputy warden; D. Davey, facility captain; R. Gamberg, correction lieutenant; and  
12 D. Vanleer, correctional lieutenant. Plaintiff alleges generally that his rights were violated when  
13 he was placed on lock-down status stemming from "unsubstantiated claims of gang  
14 involvement."

15 Plaintiff claims generally:

16 High Desert State Prison is regarded as an institution that functions  
17 autonomously to the rest of CDCR. It is very common to hear staff at  
18 HDSP state that, "This is High Desert, and we do what we want." There  
19 are numerous investigations and allegations currently against the staff here  
20 and the Sacramento Bee has went so far as to do an investigative article  
21 about this specific institution.

22 According to plaintiff, on October 6, 2009, he was removed from the general  
23 population and placed in the Facility B Building 2, which plaintiff states is used for  
24 administrative segregation, "and left without clothes." He alleges that this was part of an "illegal  
25 investigation" in which he and other inmates were "rounded-up" in this manner. He states that,  
26 after 45 minutes in the cold, he and the other inmates were taken into the dining hall. Plaintiff  
states that the prison administration was attempting to single out active participants in a prison  
gang known as "2-5." After two hours, staff presented each inmate with a "property receipt" to

1 sign. Plaintiff was told that all of his property would be “donated” if he refused to sign the  
2 receipt. He states that he was then housed in “B2” without any documentation as to why he was  
3 being placed in administrative segregation.

4 Plaintiff claims that he was left without the necessities of personal hygiene. When  
5 he asked correctional staff for such items as soap and toilet paper, he was told: “Captain Davey  
6 told us not to give you guys shit, because you don’t have shit coming.” According to plaintiff,  
7 after three days he was finally provided soap, a toothbrush, and tooth powder. Plaintiff also  
8 states that he was denied access to his personal property, including necessary asthma medication,  
9 for two months. He states that his asthma inhaler was returned two months later only after his  
10 relatives filed grievances on his behalf. Plaintiff claims that he was not released from  
11 administrative segregation until June 2010. He states that for the entire time he was in  
12 administrative segregation, he was never provided any hearing and no investigation was  
13 conducted.

14 Plaintiff alleges a violation of his due process rights in connection with his  
15 placement in administrative segregation without notice or an opportunity to be heard. He also  
16 alleges a Eighth Amendment violations arising from the conditions of his confinement in  
17 administrative segregation.

## 18 19 **II. DISCUSSION**

20 Plaintiff has named as defendants those supervisory personnel he alleges are  
21 responsible for his improper placement in administrative segregation and the unconstitutional  
22 conditions of confinement he says he experienced. Supervisory personnel are generally not  
23 liable under § 1983 for the actions of their employees. See Taylor v. List, 880 F.2d 1040, 1045  
24 (9th Cir. 1989) (holding that there is no respondeat superior liability under § 1983). A supervisor  
25 is only liable for the constitutional violations of subordinates if the supervisor participated in or  
26 directed the violations. See id. The Supreme Court has rejected the notion that a supervisory

1 defendant can be liable based on knowledge and acquiescence in a subordinate's unconstitutional  
2 conduct because government officials, regardless of their title, can only be held liable under  
3 § 1983 for his or her own conduct and not the conduct of others. See Ashcroft v. Iqbal, 556 U.S.  
4 662, 129 S.Ct. 1937, 1949 (2009). Supervisory personnel who implement a policy so deficient  
5 that the policy itself is a repudiation of constitutional rights and the moving force behind a  
6 constitutional violation may, however, be liable even where such personnel do not overtly  
7 participate in the offensive act. See Redman v. Cnty of San Diego, 942 F.2d 1435, 1446 (9th Cir.  
8 1991) (en banc).

9           When a defendant holds a supervisory position, the causal link between such  
10 defendant and the claimed constitutional violation must be specifically alleged. See Fayle v.  
11 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.  
12 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel  
13 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th  
14 Cir. 1982). “[A] plaintiff must plead that each Government-official defendant, through the  
15 official’s own individual actions, has violated the constitution.” Iqbal, 129 S.Ct. at 1948.

16           As indicated above, the supervisory defendants named in this case cannot be liable  
17 merely because they are supervisory personnel. Rather, plaintiff must allege that these  
18 defendants implemented a policy which was so deficient that it constituted a repudiation of his  
19 constitutional rights. Given plaintiff’s general allegation that High Desert State Prison is run as  
20 an autonomous entity, it appears that plaintiff may be attempting to make such an allegation.  
21 Allegations of the involvement of supervisory personnel, however, must be specific. Conclusory  
22 or vague allegations are insufficient. Such is the case here. While plaintiff has generally  
23 indicated that there are improprieties in the way High Desert State Prison is being run, he has not  
24 specifically alleged how the named defendants are responsible. He has not identified any specific  
25 policy instituted by any supervisory defendant which caused the constitutional violations of  
26 which he complains. Plaintiff will be provided an opportunity to amend.

1 **III. CONCLUSION**

2 Because it is possible that the deficiencies identified in this order may be cured by  
3 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire  
4 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is  
5 informed that, as a general rule, an amended complaint supersedes the original complaint. See  
6 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to  
7 amend, all claims alleged in the original complaint which are not alleged in the amended  
8 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if  
9 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make  
10 plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be  
11 complete in itself without reference to any prior pleading. See id.

12 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
13 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
14 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
15 each named defendant is involved, and must set forth some affirmative link or connection  
16 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d  
17 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

18 Finally, plaintiff is warned that failure to file an amended complaint within the  
19 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at  
20 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply  
21 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).  
22 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's complaint is dismissed with leave to amend; and
2. Plaintiff shall file a first amended complaint within 30 days of the date of service of this order.

DATED: January 12, 2012

  
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**CRAIG M. KELLISON**  
UNITED STATES MAGISTRATE JUDGE