

1

2

3

4

5

6

7

8

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

9

10

11 BOBBY HARKER,

No. 13-cv-1305 TLN CKD

12 Plaintiff,

13 v.

ORDER

14 STACY ZIGLER, et al.,

15 Defendants.

16

17

18

19

20

21

22

This case is before the Court pursuant to Defendants G. Anderson, R. Carter, L. Rodriguez, and T. Virga (hereinafter referred to as “Supervising Defendants”) Motion to Dismiss. (ECF No. 44.) The Court has carefully considered the arguments raised in Supervising Defendant’s motion, Plaintiff Bobby Harker’s (“Plaintiff”) opposition (ECF No. 46) and Supervising Defendants’ reply (ECF No. 49). For the reasons stated below, Supervising Defendants’ Motion to Dismiss Plaintiff’s Complaint (ECF No. 44) is hereby DENIED.

23

I. Factual and Procedural Background

24

25

26

Plaintiff is a prison inmate currently incarcerated at California State Prison, Los Angeles County (“CSP-LAC”), located in Lancaster, California. Plaintiff filed a civil rights action on February 19, 2013, pursuant to 42 U.S.C. § 1983, alleging that Defendant S. Zigler¹

27

28

¹ The Office of the Attorney General represents Supervising Defendants. Defendant Zigler is not represented by the Office of the Attorney General and did not join in the filing of this motion. Count One of Plaintiff’s Complaint is brought solely against Defendant Zigler, while Count Two pertains solely to Supervising Defendants.

1 sexually abused and assaulted Plaintiff while he was incarcerated at California State Prison,
2 Sacramento (“SAC”), located in Represa, California. (Compl., ECF No. 1.) The Complaint
3 further alleges that Supervising Defendants violated Plaintiff’s rights through their deliberate
4 indifference toward Defendant Zigler’s sexual misconduct.²

5 On October 15, 2013, Supervising Defendants filed a Motion to Dismiss Plaintiff’s
6 Complaint on the following grounds: (1) the Complaint fails to state a cognizable claim for relief
7 and should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6); and (2)
8 Supervising Defendants are entitled to qualified immunity. (ECF No. 44.) Additionally,
9 Supervising Defendants move this Court to strike Plaintiff’s request for punitive damages. (ECF
10 No. 44.)

11 II. Legal Standard

12 Federal Rule of Civil Procedure 8(a) requires that a pleading contain “a short and
13 plain statement of the claim showing that the pleader is entitled to relief.” *See Ashcroft v. Iqbal*,
14 556 U.S. 662, 678–79 (2009). Under notice pleading in federal court, the complaint must “give
15 the defendant fair notice of what the claim . . . is and the grounds upon which it rests.” *Bell*
16 *Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotations omitted). “This simplified
17 notice pleading standard relies on liberal discovery rules and summary judgment motions to
18 define disputed facts and issues and to dispose of unmeritorious claims.” *Swierkiewicz v. Sorema*
19 *N.A.*, 534 U.S. 506, 512 (2002).

20 On a motion to dismiss, the factual allegations of the complaint must be accepted
21 as true. *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court is bound to give plaintiff the benefit of
22 every reasonable inference to be drawn from the “well-pleaded” allegations of the complaint.
23 *Retail Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not
24 allege “‘specific facts’ beyond those necessary to state his claim and the grounds showing
25 entitlement to relief.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the
26 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
27

28 As such, this motion does not address Plaintiff’s claim against Defendant Zigler.

² Supervising Defendants are sued in their individual capacities.

1 defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S.
2 544, 556 (2007)).

3 Nevertheless, a court “need not assume the truth of legal conclusions cast in the
4 form of factual allegations.” *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th
5 Cir. 1986). While Rule 8(a) does not require detailed factual allegations, “it demands more than
6 an unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A
7 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the
8 elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678
9 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements, do not suffice.”). Moreover, it is inappropriate to assume that the plaintiff “can prove
11 facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not
12 been alleged[.]” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*,
13 459 U.S. 519, 526 (1983).

14 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged
15 “enough facts to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 697
16 (quoting *Twombly*, 550 U.S. at 570). Only where a plaintiff has failed to “nudge[] [his or her]
17 claims . . . across the line from conceivable to plausible[,]” is the complaint properly dismissed.
18 *Id.* at 680. While the plausibility requirement is not akin to a probability requirement, it demands
19 more than “a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678. This
20 plausibility inquiry is “a context-specific task that requires the reviewing court to draw on its
21 judicial experience and common sense.” *Id.* at 679.

22 In ruling upon a motion to dismiss, the court may consider only the complaint, any
23 exhibits thereto, and matters which may be judicially noticed pursuant to Federal Rule of
24 Evidence 201. *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Isuzu*
25 *Motors Ltd. v. Consumers Union of United States, Inc.*, 12 F. Supp. 2d 1035, 1042 (C.D. Cal.
26 1998).

27 If a complaint fails to state a plausible claim, “[a] district court should grant leave
28 to amend even if no request to amend the pleading was made, unless it determines that the

1 pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d
2 1122, 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 484, 497 (9th Cir.
3 1995)); *see also Gardner v. Marino*, 563 F.3d 981, 990 (9th Cir. 2009) (finding no abuse of
4 discretion in denying leave to amend when amendment would be futile). Although a district court
5 should freely give leave to amend when justice so requires under Rule 15(a)(2), “the court’s
6 discretion to deny such leave is ‘particularly broad’ where the plaintiff has previously amended
7 its complaint[.]” *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 520 (9th Cir.
8 2013) (quoting *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004)).

9 **III. Analysis**

10 Supervising Defendants’ motion raises two main arguments: (1) the Complaint
11 fails to state a cognizable claim pursuant to Federal Rule of Civil Procedure 12(b)(6); and (2)
12 Supervising Defendants are entitled to qualified immunity. (ECF No. 44.) Additionally,
13 Supervising Defendants assert that Plaintiff is not entitled to punitive damages. (ECF No. 44.)
14 The Court addresses each contention in turn.

15 **A. Failure to State A Claim**

16 Defendants assert that Plaintiff’s Complaint does not meet the factual pleading
17 standard set forth in *Iqbal*. More specifically, Supervising Defendants assert that Plaintiff fails to
18 allege facts in support of the complaint that Supervising Defendants had knowledge of the alleged
19 sexual abuse and thus, Plaintiff cannot meet the deliberate indifference standard required of
20 Eighth Amendment claims.³ (ECF No. 44 at 6.)

21 The Court has reviewed Plaintiff’s Complaint and finds that although the factual
22 allegations are sparse, the facts alleged nudge Plaintiff’s claims “across the line from conceivable
23 to plausible.” *See Iqbal*, 556 U.S. at 680. For example, Plaintiff alleges that “in July 2011, an
24 inmate caught [Defendant] Ziglar having sex with Plaintiff and notified prison guard staff.” (ECF
25 No. 1 at ¶ 18.) Plaintiff also alleges that this discovery resulted in an internal investigation,

26
27 ³ Because the parties have both acknowledged within their briefing that Supervisory Defendants may not be
28 liable under § 1983 unless there is “a sufficient causal connection between the supervisor’s wrongful conduct and the
constitutional violation,” *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989), the Court need not address Supervisory
Defendants’ contention that they cannot be held liable based on the doctrine of respondeat superior.

1 followed by the termination of the alleged sexual misconduct. (ECF No. 1 at ¶ 18.) These
2 allegations taken in the light most favorable to Plaintiff suffice to usher Plaintiff's claim within
3 the plausible requirement set forth in *Iqbal*. See *Iqbal*, 556 U.S. at 678–79. As such, Supervisory
4 Defendants' motion to dismiss for failure to state a claim is denied.

5 B. Qualified Immunity

6 Qualified immunity generally shields government officials performing
7 discretionary functions from liability for civil damages insofar as their conduct does not violate
8 clearly established statutory or constitutional rights of which a reasonable person would have
9 known. *Mitchell v. Forsyth*, 472 U.S. 511, 517 (1985). The determination as to whether qualified
10 immunity applies requires a two-step test: (1) whether facts alleged, taken in the light most
11 favorable to the injured party, show the defendants' conduct violated a constitutional right; and
12 (2) whether the right was clearly established. *Lacey v. Maricopa County*, 693 F.3d 896, 915 (9th
13 Cir. 2012) (en banc). Qualified immunity is a fact intensive determination. See *Saucier v. Katz*,
14 533 U.S. 194, 201 (2001), *overruled in part on other grounds by Pearson v. Callahan*, 555 U.S.
15 223, 236 (2009). The cornerstone of the qualified immunity analysis is the reasonableness of the
16 official's conduct. See *Rosenbaum v. Washoe County*, 663 F.3d 1071, 1075–76 (9th Cir. 2011)
17 (“The linchpin of qualified immunity is the reasonableness of the official's conduct.”); *Anderson v.*
18 *Creighton*, 483 U.S. 635, 638–39 (1987) (“[W]hether an official protected by qualified immunity
19 may be held personally liable for an allegedly unlawful official action generally turns on the
20 objective legal reasonableness of the action, assessed in light of the legal rules that were clearly
21 established at the time it was taken.” (internal quotation marks and citations omitted)). Thus,
22 although qualified immunity should be decided at the earliest opportunity, the relevant facts must
23 be ascertainable by the Court so that it may examine the reasonableness of the state officials'
24 behavior. See *Groten v. California*, 251 F.3d 844, 851 (9th Cir. 2001); *Clinton v. De La Cruz*,
25 No. CV 08-4181-DOC OP, 2012 WL 1247142, at *7 (C.D. Cal. Mar. 7, 2012).

26 Because there has been no discovery in this matter, the Court is unable to
27 determine the reasonableness of Supervisory Defendants' actions at this time. The Ninth Circuit
28 has held that unless a court can determine on the complaint alone that a 12(b)(6) dismissal based

1 on qualified immunity applies, it should refrain from making such a determination prior to
2 discovery. *See Groten*, 251 F.3d at 851 (9th Cir. 2001); *Jensen v. City of Oxnard*, 145 F.3d 1078,
3 1086 (9th Cir. 1988). Thus, the Court declines to address Supervisory Defendants' qualified
4 immunity argument at this time, but invites Supervisory Defendants to re-raise this issue once the
5 appropriate factual basis for their argument may be ascertained.

6 C. Punitive Damages

7 Supervising Defendants move this Court to strike Plaintiff's claim for punitive
8 damages. (ECF No. 44.) Supervising Defendants assert that Plaintiff cannot show evil motive,
9 evil intent, or reckless and callous indifference to a federally protected right, which is required to
10 recover punitive damages. (ECF No. 44 at 11.)

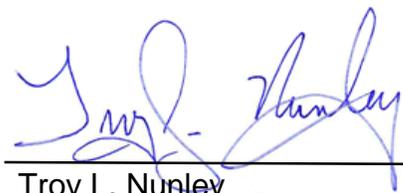
11 For the reason stated above concerning Supervising Defendants' qualified
12 immunity claim, the Court declines Defendants' invitation to evaluate the appropriateness of
13 punitive damages at this time. The Court is required to review the allegations in the light most
14 favorable to Plaintiff and thus cannot at this juncture find that Plaintiff is foreclosed from
15 showing the requisite intent. As such, Supervising Defendants' motion to strike is DENIED.
16 However, Supervising Defendants are not barred from bringing future motions concerning the
17 appropriateness of punitive damages, once the relevant facts supporting their assertions are
18 ascertainable to the Court.

19 IV. Conclusion

20 For the foregoing reasons, Supervisory Defendant's Motion to Dismiss Plaintiff's
21 Complaint (ECF No. 44) is hereby DENIED.

22 IT IS SO ORDERED.

23 Dated: March 21, 2014

24 
25 _____
26 Troy L. Nunley
27 United States District Judge
28