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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEXTER BROWN,  
  
Plaintiff,  
  
v.  
  
EDMUND G. BROWN, et al.,  
  
Defendants.

No. 2:14-cv-337-JAM-EFB P

ORDER GRANTING IFP AND FINDINGS  
AND RECOMMENDATIONS TO DISMISS  
PURSUANT TO 28 U.S.C. § 1915A

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). In addition to filing a complaint, he has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

**I. Request to Proceed In Forma Pauperis**

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).

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1     **II. Screening Requirement and Standards**

2           Federal courts must engage in a preliminary screening of cases in which prisoners seek  
3 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
4 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion  
5 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
6 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
7 relief.” *Id.* § 1915A(b).

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10 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion  
11 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which  
12 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such  
13 relief.” *Id.* § 1915A(b).

14           A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)  
15 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and  
16 plain statement of the claim showing that the pleader is entitled to relief, in order to give the  
17 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*  
18 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).  
19 While the complaint must comply with the “short and plain statement” requirements of Rule 8,  
20 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 129 S.  
21 Ct. 1937, 1949 (2009).

22           To avoid dismissal for failure to state a claim a complaint must contain more than “naked  
23 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of  
24 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of  
25 a cause of action, supported by mere conclusory statements do not suffice.” *Ashcroft v. Iqbal*,  
26 129 S. Ct. at 1949.

27           Furthermore, a claim upon which the court can grant relief must have facial plausibility.  
28 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual

1 content that allows the court to draw the reasonable inference that the defendant is liable for the  
2 misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949. When considering whether a complaint states a  
3 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*  
4 *Pardus*, 127 S. Ct. 2197, 2200 (2007), and construe the complaint in the light most favorable to  
5 the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

### 6 **III. Screening Order**

7 The court has reviewed plaintiff’s complaint (ECF No. 1) pursuant to § 1915A. It names  
8 California Governor Brown, California Health Care Facility (CHCF) Warden Rackley, and CHFC  
9 Chief Medical Officer Lau as defendants. Plaintiff alleges that after an attempt was made on his  
10 life by causing him to suffer from potassium toxicity, defendants Rackley and Lau  
11 “maladministered” his related administrative appeal, knowing it would prevent an investigation  
12 into the attempted murder. He further alleges Governor Brown was aware of his “subordinates”  
13 conduct in this regard. Plaintiff’s allegations regarding the potassium toxicity are currently  
14 pending in another lawsuit. *See Brown v. Naseer*, 2:14-cv-225-WBS-CKD (E.D. Cal.), ECF No.  
15 1 (plaintiff’s complaint, alleging defendant Naseer instructed nursing staff to deny plaintiff  
16 medical care for “the sudden onset of a deadly condition known as hyperkalemia (potassium  
17 toxicity”).

18 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)  
19 that a right secured by the Constitution or laws of the United States was violated, and (2) that the  
20 alleged violation was committed by a person acting under the color of state law. *West v. Atkins*,  
21 487 U.S. 42, 48 (1988). An individual defendant is not liable on a civil rights claim unless the  
22 facts establish the defendant’s personal involvement in the constitutional deprivation or a causal  
23 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.  
24 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44  
25 (9th Cir. 1978).

26 Plaintiff fails to state a claim upon which relief can be granted. First, there are no  
27 constitutional requirements regarding how a grievance system is operated. *See Ramirez v.*  
28 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding that prisoner’s claimed loss of a liberty

1 interest in the processing of his appeals does not violate due process because prisoners lack a  
2 separate constitutional entitlement to a specific prison grievance system). Thus, plaintiff may not  
3 impose liability on defendants Rackley or Lau simply because they played a role in processing  
4 plaintiff's inmate appeals. *See Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993) (an  
5 administrative "grievance procedure is a procedural right only, it does not confer any substantive  
6 right upon the inmates. Hence, it does not give rise to a protected liberty interest requiring the  
7 procedural protections envisioned by the fourteenth amendment. . . . Thus, defendants' failure to  
8 process any of Buckley's grievances, without more, is not actionable under section 1983."  
9 (internal quotations omitted)). Second, plaintiff improperly attempts to impose liability on  
10 defendant Brown solely based on his alleged supervisory role. Plaintiff may not sue any official  
11 on the theory that the official is liable for the unconstitutional conduct of his or her subordinates.  
12 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948 (2009). Because respondeat superior liability is  
13 inapplicable to § 1983 suits, "a plaintiff must plead that each Government-official defendant,  
14 through the official's own individual actions, has violated the Constitution." *Id.* Plaintiff has not  
15 done so in his complaint. His unsupported and conclusory allegations that defendant Brown is  
16 liable for the alleged wrongdoing of defendants Rackley and Lau falls far short of what is  
17 required to demonstrate a defendant's involvement or personal participation in any constitutional  
18 deprivation.

19 For these reasons, the complaint fails to state a claim upon which relief may be granted.  
20 And any claims related to plaintiff's Eighth Amendment claim based on the potassium toxicity he  
21 allegedly experienced, must be pursued in the action he initially commenced. *See Cato v. United*  
22 *States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). Because the defects in plaintiff's claims could not  
23 be cured through further amendment, this action must be dismissed without leave to amend.

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Plaintiff's request to proceed in forma pauperis (ECF No. 8) is granted.
- 26 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in  
27 accordance with the notice to the California Department of Corrections and Rehabilitation, filed  
28 concurrently herewith.

1 Further, IT IS HEREBY RECOMMENDED that the complaint be dismissed for failure to  
2 state a claim upon which relief may be granted and that the Clerk be directed to close the case.

3 These findings and recommendations are submitted to the United States District Judge  
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
5 after being served with these findings and recommendations, any party may file written  
6 objections with the court and serve a copy on all parties. Such a document should be captioned  
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
8 objections shall be served and filed within fourteen days after service of the objections. The  
9 parties are advised that failure to file objections within the specified time may waive the right to  
10 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
11 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

12 DATED: May 20, 2014.

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14 EDMUND F. BRENNAN  
15 UNITED STATES MAGISTRATE JUDGE  
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