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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JONATHON ANDREW HAMPTON,  
Plaintiff,  
v.  
STATE OF CALIFORNIA, et al.,  
Defendants.

No. 2:19-cv-0851 JAM DB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges his rights were violated during his 2009 criminal trial and requests immediate release from custody. Presently before the court is plaintiff's motion to proceed in forma pauperis (ECF No. 2), motion for injunctive relief (ECF No. 7), and his complaint for screening (ECF No. 1). For the reasons set forth below, the court will grant plaintiff's motion to proceed in forma pauperis, dismiss the complaint with leave to amend, and recommend that his motion for injunctive relief be denied.

**IN FORMA PAUPERIS**

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). (ECF No. 2.) 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

1 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct  
2 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
3 forward it to the Clerk of the court. Thereafter, plaintiff will be obligated for monthly payments  
4 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
5 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
6 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
7 1915(b)(2).

## 8 SCREENING

### 9 I. Legal Standards

10 The court is required to screen complaints brought by prisoners seeking relief against a  
11 governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. §  
12 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims  
13 that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
14 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
15 U.S.C. § 1915A(b)(1) & (2).

16 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
17 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
18 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
19 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
20 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
21 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227.

22 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
23 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
24 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
25 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
26 However, in order to survive dismissal for failure to state a claim a complaint must contain more  
27 that "a formulaic recitation of the elements of a cause of action;" it must contain factual  
28 allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550

1 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
2 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
3 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
4 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

5 The Civil Rights Act under which this action was filed provides as follows:

6 Every person who, under color of [state law] . . . subjects, or causes  
7 to be subjected, any citizen of the United States . . . to the deprivation  
8 of any rights, privileges, or immunities secured by the Constitution .  
. . shall be liable to the party injured in an action at law, suit in equity,  
or other proper proceeding for redress.

9 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
10 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
11 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A  
12 person 'subjects' another to the deprivation of a constitutional right, within the meaning of §  
13 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform  
14 an act which he is legally required to do that causes the deprivation of which complaint is made."  
15 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

16 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of  
17 their employees under a theory of respondeat superior and, therefore, when a named defendant  
18 holds a supervisory position, the causal link between him and the claimed constitutional  
19 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);  
20 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations  
21 concerning the involvement of official personnel in civil rights violations are not sufficient. See  
22 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

### 23 I. Federal Rule of Civil Procedure 8(a)

24 To determine whether a complaint states a claim, the court looks to the pleading standards  
25 under Federal Rule of Civil Procedure 8(a). "Rule 8(a)'s simplified pleading standard applies to  
26 all civil actions, with limited exceptions," none of which applies here. Swierkiewicz v. Sorema  
27 N.A., 534 U.S. 506, 513 (2002). Although the Federal Rules of Civil Procedure adopt a flexible  
28 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and

1 succinctly. Jones v. Community Redevelopment Agency of City of Los Angeles, 733 F.2d 646,  
2 649 (9th Cir. 1984).

3 Plaintiff's complaint is 206 pages long, contains over 53 pages of handwritten allegations,  
4 and numerous exhibits. The complaint is neither short nor plain, and therefore does not comply  
5 with Rule 8. Hatch v. Reliance Ins. Co., 758 F.2d 409, 415 (9th Cir. 1985), cert. denied, 474 U.S.  
6 1021 (1985) (confusing and conclusory complaint exceeding 70 pages with attachments, was  
7 subject to dismissal for want of a short and plain statement of the claim); Hollis v. York, No.  
8 1:09-cv-0463 OWW SMS, 2011 WL 3740811 at \*1 (E.D. Cal. Aug. 24, 2011) (A 34-page  
9 complaint with 34 pages of exhibits "that lists multiple unrelated incidents and contains legal  
10 argument" violates Rule 8); Simmons v. Akanno, No. 1:09-cv-0659 GBC PC, 2010 WL 5186690  
11 at \*3 (E.D. Cal. Dec. 7, 2010) (A 33-page complaint with 53 pages of exhibits violates Rule 8);  
12 Knapp v. Cate, No. 1:08-cv-1779 SKO PC, 2010 WL 3521871 at \*2 (E.D. Cal. Sept. 7, 2010) (A  
13 26-page complaint with 60 pages of exhibits violates Rule 8).

14 Plaintiff will be granted leave to file an amended complaint that complies with Rule 8(a).  
15 Twenty-five pages is more than sufficient for plaintiff to identify his claims and set forth specific  
16 facts in support of those claims. Accordingly, the amended complaint should not exceed twenty-  
17 five pages in length, and it may be stricken from the record if it violates this page limitation.

## 18 **II. Amending the Complaint**

19 Plaintiff is advised that in an amended complaint he must clearly identify each defendant  
20 and the action that defendant took that violated his constitutional rights. The court is not required  
21 to review exhibits to determine what plaintiff's charging allegations are as to each named  
22 defendant. All claims must be included in the body of the complaint. The charging allegations  
23 must be set forth in the amended complaint, so defendants have fair notice of plaintiff's claims.  
24 That said, plaintiff need not provide every detailed fact in support of his claims. Rather, plaintiff  
25 should provide a short, plain statement of each claim. See Fed. R. Civ. P. 8(a).

26 Any amended complaint must show the federal court has jurisdiction, the action is brought  
27 in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must  
28 contain a request for particular relief. Plaintiff must identify as a defendant only persons who

1 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.  
2 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation  
3 of a constitutional right if he does an act, participates in another's act or omits to perform an act  
4 he is legally required to do that causes the alleged deprivation).

5 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.  
6 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed.  
7 R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
8 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

9 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
10 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any  
11 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.  
12 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be  
13 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema  
14 N.A., 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting point of a simplified pleading system,  
15 which was adopted to focus litigation on the merits of a claim."); Fed. R. Civ. P. 8.

16 An amended complaint must be complete in itself without reference to any prior pleading.  
17 E.D. Cal. R. 220. Once plaintiff files an amended complaint, all prior pleadings are superseded.

18 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and  
19 has evidentiary support for his allegations, and for violation of this rule the court may impose  
20 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

## 21 **INJUNCTIVE RELIEF**

22 After filing the complaint, plaintiff filed a motion requesting injunctive relief and  
23 requesting the court grant the relief sought in the petition for writ of mandamus included in the  
24 complaint. (ECF No. 7.) Based on review of plaintiff's filings in this action, it appears that  
25 plaintiff seeks release from prison and an order directing the California Supreme Court to  
26 assemble en banc to resolve questions of law relevant to plaintiff's ongoing state habeas  
27 proceedings. (ECF Nos. 1, 4, 7.)

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1           **I.       Legal Standards**

2                   **A.   Injunctive Relief**

3           A party requesting preliminary injunctive relief must show that “he is likely to succeed on  
4 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
5 balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v.  
6 Natural Res. Def. Council, 555 U.S. 7, 20 (2008). The propriety of a request for injunctive relief  
7 hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean  
8 Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

9           Alternatively, under the so-called sliding scale approach, as long as the plaintiff  
10 demonstrates the requisite likelihood of irreparable harm and can show that an injunction is in the  
11 public interest, a preliminary injunction may issue so long as serious questions going to the merits  
12 of the case are raised and the balance of hardships tips sharply in plaintiff’s favor. Alliance for  
13 the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011) (concluding that the  
14 “serious questions” version of the sliding scale test for preliminary injunctions remains viable  
15 after Winter).

16           The principle purpose of preliminary injunctive relief is to preserve the court’s power to  
17 render a meaningful decision after a trial on the merits. See 9 Charles Alan Wright & Arthur R.  
18 Miller, Federal Practice and Procedure § 2947 (3d ed. 2014). Implicit in this required showing is  
19 that the relief awarded is only temporary and there will be a full hearing on the merits of the  
20 claims raised in the injunction when the action is brought to trial. Preliminary injunctive relief is  
21 not appropriate until the court finds that the plaintiff’s complaint presents cognizable claims. See  
22 Zepeda v. United States Immigration Serv., 753 F.2d 719, 727 (9th Cir. 1985) (“A federal court  
23 may issue an injunction if it has personal jurisdiction over the parties and subject matter  
24 jurisdiction over the claims . . .”).

25           In cases brought by prisoners involving conditions of confinement, any preliminary  
26 injunction must be narrowly drawn, extend no further than necessary to correct the harm the court  
27 finds requires preliminary relief, and be the least intrusive means necessary to correct the harm.”  
28 18 U.S.C. § 3626(a)(2). Further, an injunction against individuals not parties to an action is

1 strongly disfavored. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110  
2 (1969) (“It is elementary that one is not bound by a judgment . . . resulting from litigation in  
3 which he is not designated as a party . . .”).<sup>1</sup>

4 Further, preliminary injunctive relief is not appropriate until the court finds that the  
5 plaintiff’s complaint presents cognizable claims. See Zepeda v. United States Immigration Serv.,  
6 753 F.2d 719, 727 (9th Cir. 1985) (“A federal court may issue an injunction if it has personal  
7 jurisdiction over the parties and subject matter jurisdiction over the claim; [however] it may not  
8 attempt to determine the rights of persons not before the court.”).

### 9 **B. Writ of Mandamus**

10 “The writ of mandamus is a ‘drastic and extraordinary’ remedy ‘reserved for really  
11 extraordinary causes.’” In re Van Dusen, 654 F.3d 838, 840 (9th Cir. 2011) (quoting Ex parte  
12 Fahey, 332 U.S. 258, 259-60 (1947)). See Gulfstream Aerospace Corp. v. Mayacamas Corp., 485  
13 U.S. 271, 289 (1988) (“This Court repeatedly has observed that the writ of mandamus is an  
14 extraordinary remedy, to be reserved for extraordinary situations.”). Moreover, “federal courts  
15 are without power to issue writs of mandamus to direct state courts or their judicial officers in the  
16 performance of their duties.” Clark v. Washington, 366 F.2d 678, 681 (9th Cir. 1966); see also  
17 Demos v. U.S. Dist. Court, 925 F.2d 1160, 1161-62 (9th Cir. 1991) (noting that federal courts  
18 lack jurisdiction to issue writs of mandamus to state courts and that such petitions “are frivolous  
19 as a matter of law”).

## 20 **II. Analysis**

21 Plaintiff may not pursue release from prison in a § 1983 action. Preiser v. Rodriguez, 411  
22 U.S. 475, 479 (1973) (“Release from penal custody is not an available remedy under the Civil  
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24 <sup>1</sup> However, the fact that injunctive relief is sought from one not a party to litigation does not  
25 automatically preclude the court from acting. The All Writs Act, 28 U.S.C. § 16519(a) permits  
26 the court to issue writs “necessary or appropriate in aid of their jurisdictions and agreeable to the  
27 usages and principles of law.” The All Writs Act is meant to aid the court in the exercise and  
28 preservation of its jurisdiction. Plum Creek Lumber Co. v. Hutton, 608 F.2d 1283, 1289 (9th Cir.  
1979). The United States Supreme Court has authorized the use of the All Writs Act in  
appropriate circumstances against persons or entities not a party to the underlying litigation.  
United States v. New York Telephone Co., 434 U.S. 159, 174 (1977).

1 Rights Act”); Young v. Kenny, 907 F.2d 874, 875 (9th Cir. 1989) (“Where a state prisoner  
2 challenges the fact or duration of his confinement, his sole federal remedy is a writ of habeas  
3 corpus.”). Additionally, preliminary injunctive relief is not appropriate because plaintiff has not  
4 yet stated a cognizable claim. Zepeda, 753 F.2d at 727.

5 Therefore, the court will recommend that plaintiff’s motion for injunctive relief be denied.  
6 Plaintiff’s request for a writ of mandamus must also be denied because this court does not have  
7 the authority to issue a writ of mandamus to any state court. Demos, 925 F.2d at 1161-62.

### 8 CONCLUSION

9 IT IS HEREBY ORDERED that:

- 10 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is granted.
- 11 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
12 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §  
13 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order  
14 to the Director of the California Department of Corrections and Rehabilitation filed  
15 concurrently herewith.
- 16 3. Plaintiff’s complaint (ECF No. 1) is dismissed with leave to amend.
- 17 4. Plaintiff is granted thirty days from the date of service of this order to file an amended  
18 complaint that complies with the requirements of the Civil Rights Act, the Federal  
19 Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint  
20 must bear the docket number assigned to this case and must be labeled “First  
21 Amended Complaint.”
- 22 5. Failure to comply with this order will result in a recommendation that this action be  
23 dismissed.

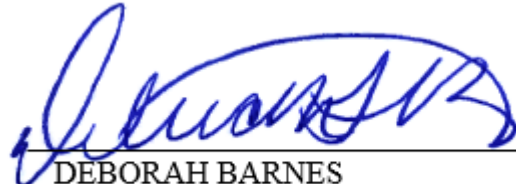
24 IT IS HEREBY RECOMMENDED that plaintiff’s motion for injunctive relief and  
25 petition for writ of mandamus (ECF No. 7) be denied.

26 These findings and recommendations will be submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
28 after being served with these findings and recommendations, any party may file written



1 objections with the court and serve a copy on all parties. The document should be captioned  
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
3 objections shall be filed and served within fourteen days after service of the objections. The  
4 parties are advised that failure to file objections within the specified time may result in waiver of  
5 the right to appeal the district court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: July 24, 2019

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10 DEBORAH BARNES  
11 UNITED STATES MAGISTRATE JUDGE  
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