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

CUONG HUY DAO,

 Plaintiff,

 v.

DUSTIN CAMPBELL, et al.,

 Defendants.

No. 2:23-CV-1242-KJM-DMC-P

ORDER

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 second amended complaint, ECF No. 14.

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). This provision also applies if the plaintiff was incarcerated at the time the action was initiated even if the litigant was subsequently released from custody. See Olivas v. Nevada ex rel. Dep’t of Corr., 856 F.3d 1281, 1282 (9th Cir. 2017). 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

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

10 I. BACKGROUND

11 A. Procedural History

12 Plaintiff initiated this action with a pro se complaint filed on June 28, 2023. See
13 ECF No. 1. On July 14, 2023, before the Court could address the sufficiency of Plaintiff’s
14 complaint, Plaintiff filed a first amended complaint as of right. See ECF No. 9. On May 20,
15 2024, the Court issued an order addressing the sufficiency of the first amended complaint. See
16 ECF No. 13. In dismissing the first amended complaint with leave to amend, the Court stated as
17 follows:

18 . . . Prior to screening of the original complaint, Plaintiff
19 filed the pending first amended complaint as of right on July 14, 2023. See
20 ECF No. 9. This pleading is 182 pages long, consisting entirely of
21 Plaintiff’s hand-written allegations. See id. Plaintiff now names 201
22 individual defendants. See id. at 2-9. A number of these defendants are
23 alleged to be prison officials at Salinas Valley State Prison. See id. It thus
24 appears that Plaintiff’s claims now include allegations related to events at
25 three separate prisons – California State Prison – Sacramento, Pelican Bay
26 State Prison, and Salinas Valley State Prison. Finally, Plaintiff’s first
27 amended complaint appears to be incomplete in that the first page of the
28 pleading is page 5 of this Court’s form civil rights complaint for state
prisoners. See id. at 1. Not included with the filing are pages 1-4 of the
form complaint and, as a result, a number of key allegations, such as those
related to jurisdiction and exhaustion of administrative remedies, are not
contained within the current operative pleading.

ECF No. 13, pg. 2.

Plaintiff filed his first amended complaint on June 17, 2024. See ECF No. 14.

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1 **B. Plaintiff's Allegations**

2 Plaintiff now names the following the following 18 individual as defendants, all of
3 whom are alleged to be current or former prison officials at California State Prison – Sacramento
4 (CSP-Sac): (1) C. Rios, Correctional Officer, (2) D. Campbell, Correctional Officer, (3) C.
5 Darling, Sergeant, (4) G. Stuhr, Sergeant, (5) J. Lynch, Warden, (6) G. Smith, Lieutenant, (7) V.
6 Vitali, Lieutenant, (8) A. Konrad, Captain, (9) T. Karschner, Correctional Officer, (10) Mayhew,
7 Correctional Officer, (11) J. Nguyen, Correctional Officer, (12) Dhillion, Correctional Officer,
8 (13) C. Davis, Correctional Officer, (14) Mascadri, Correctional Officer, (15) P. Archie,
9 Correctional Officer, (16) C. Strickland, Correctional Officer, (17) J. Anderson, Lieutenant, and
10 (18) J. Stigelmayer, Lieutenant. See ECF No. 14, pgs. 2-3. Plaintiff alleges violations of his
11 Eighth Amendment rights. See id. at 4-19. Plaintiff contends Defendants repeatedly tampered
12 with Plaintiff's state-provided meals, withheld meals, and withheld Plaintiff's monthly canteen
13 store supplies. Plaintiff claims that the ingestion of the tampered food caused excessive sickness
14 to Plaintiff's body, including irritation, aches and pains, blurred vision, and digestive issues.
15 Plaintiff alleges that the constitutional violations took place at CSP-Sac. See id. at 1.

16 Plaintiff contends in Claim I that from June 1, 2020, to July 7, 2021, he was
17 housed at CSP-Sac within the Psychiatric Service Unit in Enhanced Outpatient custody against
18 Plaintiff's consent. See id. at 4. During this time, Plaintiff states that he saw many officers and
19 rival inmates deliberately tamper with Plaintiff's state meals and canteen store supplies. See id.
20 Plaintiff contends that these officers maliciously weaponized the state foods as a use of excessive
21 force to assault Plaintiff's body with poisoned food daily as retaliatory actions for reporting their
22 misconduct. See id. Plaintiff states that on July 16, 2020, outside agency investigators Lt.
23 Broddick and Lt. Brunkhorse conducted a video interview of Plaintiff regarding the incidents of
24 alleged assault, battery, and attempted murder of Plaintiff by the officers. See id. Plaintiff asserts
25 that, after this, the officers' conduct escalated and continued. See id. Plaintiff contends that
26 Defendants Darling, Stuhr, Vitali, Smith, Konrad, and Lynch failed to take action to stop their
27 subordinates' alleged activities. See id. at 5.

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1 Plaintiff filed a grievance on September 7, 2020, reporting incidents of deliberate
2 food tampering that caused Plaintiff irritation, aches, and pain. See id. More specifically, in this
3 grievance Plaintiff claimed the following instances of being provided contaminated food:

4 1. Defendants Rios and Campbell served Plaintiff poisoned
5 food on August 14, 2020, August 15, 2020, August 20, 2020, August 27,
2020, September 3, 2020, and September 5, 2020. See id. at 5-6.

6 2. Defendant Karschner served Plaintiff poisoned food on
7 August 16, 2020. See id. at 6.

8 3. Defendant Mayhew served Plaintiff poisoned food on
August 21, 2020. See id.

9 4. Defendants Nguyen served Plaintiff poisoned food on
10 August 22, 2020. See id.

11 5. Defendants Mayhew and Karschner served Plaintiff
12 poisoned food on August 24, 2020, August 25, 2020, August 26, 2020,
August 31, 2020, and September 3, 2020. See id. at 6-7, 8.

13 6. Defendant Dhillion served Plaintiff poisoned food on
August 28, 2020. See id. at 7.

14 7. Defendant Davis served Plaintiff poisoned food on August
15 29, 2020, and September 5, 2020. See id. at 7, 8.

16 8. Defendants Davis and Mascadri served Plaintiff poisoned
food on August 30, 2020. See id. at 7.

17 9. Defendants Mayhew and Karschner served Plaintiff
18 poisoned food on September 1, 2020. See id. at 8.

19 10. Defendants Archie and Mayhew served Plaintiff poisoned
food on September 4, 2020. See id.

20 11. Defendants Mayhew, Karschner, Archie, Nguyen, and
21 Davis "grouped" to serve Plaintiff poisoned food on September 7, 2020.
See id. at 8-9.

22 Plaintiff's grievance further asserted that, on October 15, 2020, Defendant
23 Anderson acted against policy governing canteen restrictions and deprived Plaintiff of his
24 monthly \$60 canteen draw for 90 days. See id. at 9. Plaintiff states that Defendants Rios and
25 Campbell are liable because they "were in charged [sic] of . . . canteen supply." Id. at 10.

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1 Plaintiff next contends in Claim II that, after Plaintiff filed his grievance,
2 Defendants continued to poison Plaintiff with tampered food between December 2, 2020, and
3 December 29, 2020. See id. at 11. Plaintiff also alleges physical threats against him by
4 Defendants Davis and Archie, though Plaintiff does not describe the threats or state when they
5 occurred. See id. As to further food tampering, Plaintiff alleges the following additional specific
6 events occurring after he filed his grievance on September 7, 2020:

7 1. Defendants Davis and Archie served Plaintiff poisoned food
8 on December 2, 2020, December 10, 2020, and December 15, 2020. See
id. at 11, 13.

9 2. Defendants Strickland and Archie served Plaintiff poisoned
10 food on December 12, 2020. See id. at 12.

11 3. On December 13, 2020, Defendant Strickland ordered
12 "higher ups" to tamper with Plaintiff's food and himself served Plaintiff
poisoned food. See id. at 12-13.

13 4. On December 16, 2020, Defendant Davis threatened to kill
14 Plaintiff. See id. at 13.

15 5. On December 17, 2020, and December 24, 2020, December
16 19, 2020, and December 29, 2020, Defendant Archie refused to allow
another staff member to provide Plaintiff with his meal and, instead,
withheld his meal. See id. at 13-14.

17 6. On December 22, 2020, and December 29, 2020,
18 Defendants Archie and Davis refused to allow other staff members to
provide Plaintiff with his meal and withheld Plaintiff's meal. See id. at 14,
15.

19 7. On December 26, 2020, Defendants Archie and Strickland
20 refused to allow other staff members to provide Plaintiff with his meal and
withheld Plaintiff's meal. See id. at 14.

21 8. On December 27, 2020, Defendant Strickland refused to
22 allow other staff members to provide Plaintiff with his meal and withheld
Plaintiff's meal. See id.

23 Plaintiff further alleges in Claim II that, in January 2021, Defendant Lynch
24 "unreasonably disapproves" his grievances. See id. at 15.

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1 Plaintiff contends in Claim III that, following the above-referenced events,
2 Defendants continued to tamper with his food. See id. at 16. Plaintiff alleges the following
3 specific instances of such continued conduct:

4 1. On February 4, 2021, February 5, 2021, and February 13,
5 2021, Defendant Archie refused to allow another staff member to provide
6 Plaintiff his meal and withheld his meal. See id. at 16-17.

7 2. On February 6, 2021, Defendant Strickland provided
8 Plaintiff with poisoned food. See id. at 17.

9 3. On February 20, 2021, Defendants Rios and Campbell
10 provided Plaintiff with poisoned food. See id.

11 Plaintiff also claims in Claim III that Defendants Darling, Stuhr, Smith, Vitale,
12 Konrad, and Lynch failed to prevent the conduct alleged to have been committed by subordinates.
13 See id. at 18. Plaintiff also claims that Defendant Lynch "unreasonably disapproved" his inmate
14 grievances concerning alleged acts of further retaliation by staff. See id.

15 Finally, Plaintiff claims that, on February 26, 2021, Defendant Stigelmayer acted
16 against policy governing canteen restrictions and deprived Plaintiff of his monthly \$60 canteen
17 draw for 90 days. See id. at 19.

18 II. DISCUSSION

19 The Court finds that the second amended complaint states potentially cognizable
20 claims against Defendants Rios, Campbell, Karschner, Mayhew, Nguyen, Dhillion, Davis,
21 Mascadri, Archie, and Strickland based on Plaintiff's Eighth Amendment claims of various
22 instances of providing Plaintiff with contaminated food, refusing to allow other staff to provide
23 uncontaminated meals, and/or withholding meals. The Court is prepared to direct service of the
24 second amended complaint on these defendants. The second amended complaint, however, is
25 defective as to Defendants Darling, Stuhr, Smith, Vitali, Konrad, and Lynch for failure to allege
26 sufficient facts to establish the liability of these defendants, who are supervisory personnel.
27 Finally, as to Defendants Anderson and Stigelmayer, the Court finds that the second amended
28 complaint fails to state a claim based on Plaintiff's allegations that these defendants denied
Plaintiff canteen privileges for 90 days.

1 Plaintiff will be provided an opportunity to amend should he wish to continue to
2 pursue claims against Defendants Darling, Stuhr, Lynch, Smith, Vitali, Konrad, Anderson, and
3 Stigelmayer. If no third amended complaint is filed within the time provided therefor, the Court
4 will direct service of the second amended complaint on Defendants Rios, Campbell, Karschner,
5 Mayhew, Nguyen, Dhillion, Davis, Mascadri, Archie, and Strickland.

6 **A. Supervisor Liability**

7 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual
8 connection or link between the actions of the named defendants and the alleged deprivations. See
9 Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). “A
10 person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of
11 § 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform
12 an act which he is legally required to do that causes the deprivation of which complaint is made.”
13 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations
14 concerning the involvement of official personnel in civil rights violations are not sufficient. See
15 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth
16 specific facts as to each individual defendant's causal role in the alleged constitutional
17 deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

18 Supervisory personnel are generally not liable under § 1983 for the actions of their
19 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no
20 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional
21 violations of subordinates if the supervisor participated in or directed the violations. See id.
22 Supervisory personnel who implement a policy so deficient that the policy itself is a repudiation
23 of constitutional rights and the moving force behind a constitutional violation may be liable even
24 where such personnel do not overtly participate in the offensive act. See Redman v. Cnty of San
25 Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc). A supervisory defendant may also be
26 liable where he or she knew of constitutional violations but failed to act to prevent them. See
27 Taylor, 880 F.2d at 1045; see also Starr v. Baca, 633 F.3d 1191, 1209 (9th Cir. 2011).

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1 prior pleading in order to make Plaintiff's amended complaint complete. See Local Rule 220. An
2 amended complaint must be complete in itself without reference to any prior pleading. See id.

3 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
4 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
5 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
6 each named defendant is involved and must set forth some affirmative link or connection between
7 each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167
8 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

9 Because the complaint appears to otherwise state cognizable claims, if no amended
10 complaint is filed within the time allowed therefor, the Court will issue findings and
11 recommendations that the claims identified herein as defective be dismissed, as well as such
12 further orders as are necessary for service of process as to the cognizable claims.

13 Accordingly, IT IS HEREBY ORDERED that Plaintiff may file a third amended
14 complaint within 30 days of the date of service of this order.

15
16 Dated: August 28, 2024



17 DENNIS M. COTA
18 UNITED STATES MAGISTRATE JUDGE