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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HERIBERTO HERNANDEZ DELOSSA,  
Plaintiff,  
v.  
BASS, et al.,  
Defendants.

Case No. [24-cv-06285-JST](#)

**ORDER OF PARTIAL SERVICE;  
DISMISSING PROPOSED CO-  
PLAINTIFFS; DISMISSING  
DEFENDANT CASTILLO WITH  
LEAVE TO AMEND**

Plaintiff, an inmate currently housed at San Quentin Rehabilitation Center (“SQRC”) has filed a *pro se* action pursuant to 42 U.S.C. § 1983. In this order, the Court screens Plaintiff’s complaint (ECF No. 1) pursuant to 28 U.S.C. § 1915A. Plaintiff has been granted leave to proceed *in forma pauperis* in a separate order.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See United States v. Qazi*, 975 F.3d 989, 993 (9th Cir. 2020).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not necessary; the statement need only “give the defendant fair notice of what the . . . claim is and the

1 grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).  
2 While Rule 8 does not require detailed factual allegations, it demands more than an unadorned,  
3 the-defendant-unlawfully-harmed-me accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009).  
4 A pleading that offers only labels and conclusions, or a formulaic recitation of the elements of a  
5 cause of action, or naked assertions devoid of further factual enhancement does not suffice. *Id.*  
6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a  
7 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
8 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487  
9 U.S. 42, 48 (1988).

10 **B. Complaint**

11 The complaint states that it is brought on behalf of Plaintiff, inmates John Riley and Jesse  
12 Rose, and “over 100 plaintiffs.”<sup>1</sup> The complaint names as defendants SQRC correctional officials  
13 Lieutenant Bass; Sergeants Simpson and Taylor; and Officer Castillo. The complaint alleges that  
14 on October 8, 2022, defendants Bass, Simpson, and Taylor ordered a correctional officer to  
15 perform an unclothed body search of Plaintiff as various female correctional officers watched.  
16 Plaintiff was traumatized emotionally and mentally by this event. The attachments to the  
17 complaint indicate that the strip search was conducted without the benefit of privacy shields and  
18 required that Plaintiff expose his genitals and anus. The complaint seeks monetary damages. *See*  
19 *generally* ECF No. 1.

20 The Court dismisses proposed co-plaintiffs inmates John Riley and Jesse Rose from this  
21 action. Neither of these inmates has signed the complaint, filed applications for leave to proceed  
22 *in forma pauperis*, or otherwise indicated that they wish to bring this action. In any event, this  
23 action may not proceed with co-plaintiffs. Generally, a *pro se* plaintiff is prohibited from pursuing  
24 claims on behalf of others in a representative capacity. *See Simon v. Hartford Life, Inc.*, 546 F.3d  
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26 <sup>1</sup> The complaint in this action appears to be identical to the complaints filed in the following cases:  
27 C No. 24-cv-5348 JST, *Sierra v. Bass, et al.*; C No. 24-cv-6262 JST, *Yepez v. Bass, et al.*; C No.  
28 No. 24-cv-6286 JST, *Hernandez v. Bass, et al.*; C No. 24-cv-6420 JST, *Dominguez v. Bass, et al.*; C  
No. 24-cv-6428 JST, *Jimenez v. Bass, et al.*; C No. 24-cv-6667 JST, *Pulido Segura v. Bass, et al.*;  
and C No. 24-cv-7502, *Mejia v. Bass, et al.*

1 661, 664-65 (9th Cir. 2008); *see also Russell v. United States*, 308 F.2d 78, 79 (9th Cir. 1962) (“a  
2 litigant appearing in propria persona has no authority to represent anyone other than himself”); *see*  
3 *also Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975) (per curiam) (“Ability to protect  
4 the interests of the class depends in part on the quality of counsel, and we consider the competence  
5 of a layman representing himself to be clearly too limited to allow him to risk the rights of  
6 others.”) (citation omitted). This dismissal of inmates John Riley #BR4912 and Jesse Rose  
7 #A43064 from this action is without prejudice to each inmate filing a separate action should they  
8 so wish. The Clerk is directed to send inmates John Riley #BR4912 and Jesse Rose #A43064 two  
9 copies of the court’s complaint form.

10 The Court also DISMISSES defendant Castillo from this action. Although defendant  
11 Castillo is named as a defendant, the complaint makes no allegations regarding defendant Castillo.  
12 The Court GRANTS Plaintiff leave to file an amended complaint bringing claims against  
13 defendant Castillo.

14 Liberally construed, the complaint states a cognizable claim against Lieutenant Bass and  
15 Sergeants Taylor and Simpson for violations of the Fourth and Fourteenth Amendments. *Byrd v.*  
16 *Maricopa Cnty. Sheriff’s Dep’t*, 629 F.3d 1135, 1142 (9th Cir. 2011) (en banc) (“*Byrd I*”) (cross-  
17 gender strip search that involves touching inmate’s genitalia and searching inside anus  
18 unreasonable as matter of law in non-emergency situation); *Byrd v. Maricopa Cnty. Bd. of*  
19 *Supervisors*, 845 F.3d 919, 922-24 (9th Cir. 2017) (“*Byrd II*”) (whether cross-gender strip search  
20 violates Fourth Amendment prohibition on unreasonable search and seizure depends on (1) scope  
21 of particular intrusion, (2) manner in which it is conducted, (3) justification for search, and  
22 (4) place in which it is conducted; whether cross-gender search violates Fourteenth Amendment  
23 right to bodily privacy depends on (1) whether there is valid, rational connection between search  
24 and legitimate governmental interest put forward to justify it; (2) whether there are alternative  
25 means of exercising Fourteenth Amendment right; (3) impact accommodation of Fourteenth  
26 Amendment right will have on guards and other inmates, and on allocation of prison resources;  
27 and (4) availability of ready alternatives); *Michenfelder v. Sumner*, 860 F.2d 328, 334 (9th Cir.  
28 1988) (in determining whether right to bodily privacy violated, relevant whether female officers

1 regularly or frequently observe unclothed inmates without legitimate reason).

2 **CONCLUSION**

3 For the reasons set forth above, the Court orders as follows.

4 1. The following defendant(s) shall be served: San Quentin Rehabilitation Center  
5 Lieutenant C. Bass, Sgt. M. Taylor, and Sgt. E. Simpson.

6 2. Service on the listed defendant(s) shall proceed under the California Department of  
7 Corrections and Rehabilitation's ("CDCR") e-service program for civil rights cases from prisoners  
8 in the CDCR's custody. In accordance with the program, the Clerk is directed to serve on the  
9 CDCR via email the following documents: the operative complaint (ECF No. 1), this order of  
10 service, a CDCR Report of E-Service Waiver form and a summons. The Clerk also shall serve a  
11 copy of this order on the Plaintiff.

12 No later than 40 days after service of this order via email on the CDCR, the CDCR shall  
13 provide the court a completed CDCR Report of E-Service Waiver advising the court which  
14 defendant(s) listed in this order will be waiving service of process without the need for service by  
15 the United States Marshal Service ("USMS") and which defendant(s) decline to waive service or  
16 could not be reached. The CDCR also shall provide a copy of the CDCR Report of E-Service  
17 Waiver to the California Attorney General's Office which, within 21 days, shall file with the Court  
18 a waiver of service of process for the defendant(s) who are waiving service.

19 Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each  
20 defendant who has not waived service according to the CDCR Report of E-Service Waiver a  
21 USM-205 Form. The Clerk shall provide to the USMS the completed USM-205 forms and copies  
22 of this order, the summons, and the operative complaint for service upon each defendant who has  
23 not waived service. The Clerk also shall provide to the USMS a copy of the CDCR Report of E-  
24 Service Waiver.

25 3. The Court DISMISSES proposed co-plaintiffs John Riley #BR4912 and Jesse Rose  
26 #A43063 from this action without prejudice to each inmate filing a separate action should they so  
27 wish. The Clerk is directed to send John Riley and Jesse Rose a courtesy copy of this order and  
28 two copies of the court's complaint form to San Quentin Rehabilitation Center.

1           4.       The Court DISMISSES defendant Castillo from this action with leave to amend. If  
2 Plaintiff wishes to file an amended complaint alleging claims against defendant Castillo, he must  
3 file the amended complaint within twenty-eight (28) days of the date of this order. The amended  
4 complaint must include the caption and civil case number used in this order, Case No. 24-cv-  
5 06285 JST (PR) and the words “AMENDED COMPLAINT” on the first page. If using the court  
6 form complaint, Plaintiff must answer all the questions on the form in order for the action to  
7 proceed. An amended complaint completely replaces the previous complaints. *See Lacey v.*  
8 *Maricopa Cty.*, 693 F.3d 896, 925 (9th Cir. 2010). Accordingly, Plaintiff must include in his  
9 amended complaint all the claims he wishes to present and all of the defendants he wishes to sue,  
10 including the claims found cognizable above and the defendants ordered served above. Plaintiff  
11 may not incorporate material from the prior complaint by reference. Failure to file an amended  
12 complaint in accordance with this order in the time provided will result in ECF No. 1 remaining  
13 the operative complaint and defendant Castillo being dismissed from this action with prejudice.  
14 The Clerk shall include two copies of the court’s complaint form with a copy of this order to  
15 Plaintiff.

16           5.       As detailed above, the complaint states a cognizable Fourth Amendment claim and  
17 a cognizable Fourteenth Amendment claim against defendants Bass, Taylor, and Simpson.

18           6.       This case has been related to ten other cases which concern the same strip search.  
19 ECF No. 12. Defendants have filed an administrative motion to modify scheduling orders and  
20 establish a bellwether case. ECF No. 13. In light of this pending motion, the Court will not set a  
21 briefing schedule at this time.

22           7.       All communications by Plaintiff with the Court must be served on Defendants’  
23 counsel by mailing a true copy of the document to Defendants’ counsel. The Court may disregard  
24 any document which a party files but fails to send a copy of to his opponent. Until Defendants’  
25 counsel has been designated, Plaintiff may mail a true copy of the document directly to  
26 Defendants but once Defendants are represented by counsel, all documents must be mailed to  
27 counsel rather than directly to Defendants.

28           8.       Discovery may be taken in accordance with the Federal Rules of Civil Procedure.

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No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required before the parties may conduct discovery.

9. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the Court informed of any change of address and must comply with the Court’s orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every pending case every time he is moved to a new facility.

10. Any motion for an extension of time must be filed no later than the deadline sought to be extended and must be accompanied by a showing of good cause. Plaintiff is cautioned that he must include the case name and case number for this case on any document he submits to the Court for consideration in this case.

**IT IS SO ORDERED.**

Dated: March 5, 2025

  
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JON S. TIGAR  
United States District Judge