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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD MARSHAL BOWMAN,

Plaintiff,

v.

STATE OF WASHINGTON,

Defendants.

CASE NO. C09-5510FDB/JRC

ORDER TO FILE AN AMENDED
COMPLAINT AND PROVIDE
SERVICE DOCUMENTS

This 42 U.S.C. § 1983 action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates Judges’ Rules MJR 1, MJR 3, and MJR 4. Plaintiff has been granted leave to proceed *in forma pauperis*. Plaintiff seeks two million dollars in damages as a result of alleged injuries he received during a fight between other inmates (Dkt. # 1 proposed complaint). Plaintiff named the Governor of the State of Washington, the Secretary of the Department of Corrections, the Superintendent of the Shelton Correctional Facility, and the State of Washington as defendants (Dkt # 1). He then clarified by letter that he was only bringing the action against the State of Washington (Dkt. # 3).

1 The complaint is deficient for a number of reasons.

2 The Eleventh Amendment to the United States Constitution prevents a state from being
3 sued in federal court for monetary damages. Quern v. Jordan, 440 U.S. 332 (1979). Washington
4 has not waived the protection of the Eleventh Amendment. Edgar v. State, 92 Wn.2d 217
5 (1979). Thus, the State of Washington cannot be a party to a Civil Rights Action seeking only
6 monetary damages.
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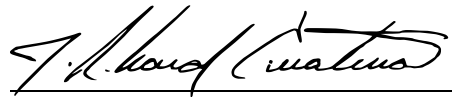
8 In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the
9 conduct complained of was committed by a person acting under color of state law and that (2)
10 the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or
11 laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on other*
12 *grounds*, Daniels v. Williams, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to
13 remedy an alleged wrong only if both of these elements are present. Haygood v. Younger, 769
14 F.2d 1350, 1354 (9th Cir. 1985), cert. denied, 478 U.S. 1020 (1986). In addition, plaintiff must
15 allege facts showing how individually named defendants caused or personally participated in
16 causing the harm alleged in the complaint. Arnold v. IBM, 637 F.2d 1350, 1355 (9th Cir. 1981).
17 A defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of supervisory
18 responsibility or position. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694
19 n.58 (1978). A theory of *respondeat superior* is not sufficient to state a § 1983 claim. Padway
20 v. Palches, 665 F.2d 965 (9th Cir. 1982).
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23 Plaintiff is ordered to file an amended complaint. The document should be titled “First
24 Amended Complaint.” The First Amended Complaint will act as a complete substitute for the
25 original and not as a supplement. For each named defendant plaintiff should submit a service
26

1 copy of the complaint and a filled out Marshal's service form. The First Amended Complaint
2 will be due on or before October 9, 2009.

3 The clerk's office is directed to send plaintiff a copy of this order and not the October 9,
4 2009, date on the court's calendar.

5 DATED this 9th day of September, 2009.
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9 J. Richard Creatura
10 United States Magistrate Judge
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