

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

ZACHARY T. ALLEN,

Plaintiff,

v.

LUIS CHAPPA; BLACKFOOT  
POLICE DEPARTMENT; BCJ;  
CINDY GOING; DAREN B.  
SIMPSON; JASON R. CHANDLER;  
BINGHAM COUNTY SHERIFF'S  
DEPARTMENT,

Defendants.

Case No. 1:20-cv-00200-DCN

**INITIAL REVIEW ORDER BY  
SCREENING JUDGE**

The Clerk of Court conditionally filed Plaintiff Zachary T. Allen's Complaint<sup>1</sup> as a result of Plaintiff's status as an inmate and in forma pauperis request. The Court now reviews the Complaint to determine whether it should be summarily dismissed in whole or in part under 28 U.S.C. §§ 1915 and 1915A. Having reviewed the record, and otherwise being fully informed, the Court enters the following Order directing Plaintiff to file an amended complaint if Plaintiff intends to proceed.

**1. Screening Requirement**

The Court must review complaints filed by prisoners seeking relief against a

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<sup>1</sup> Plaintiff's initial pleading is entitled, "Affadavit [sic] of Civil Rights Violations." See Dkt. 1. Though Plaintiff has several other cases pending in this Court, the Court construed the pleading as a separate complaint in this new civil rights action—rather than an affidavit filed in one of Plaintiff's other cases—because Plaintiff did not include a case number on the pleading and because Plaintiff later filed an application to proceed in forma pauperis in this action.

governmental entity or an officer or employee of a governmental entity, as well as complaints filed in forma pauperis, to determine whether summary dismissal is appropriate. The Court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b).

## **2. Pleading Standard**

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A complaint fails to state a claim for relief under Rule 8 if the factual assertions in the complaint, taken as true, are insufficient for the reviewing court plausibly “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “[D]etailed factual allegations” are not required, but a plaintiff must offer “more than ... unadorned, the-defendant-unlawfully-harmed-me accusation[s].” *Id.* (internal quotation marks omitted). If the facts pleaded are “merely consistent with a defendant’s liability,” or if there is an “obvious alternative explanation” that would not result in liability, the complaint has not stated a claim for relief that is plausible on its face. *Id.* at 678, 682 (internal quotation marks omitted). In addition, if an affirmative defense is an “obvious bar to securing relief on the face of the complaint,” dismissal under §§ 1915 and 1915A is appropriate. *Washington v. Los Angeles Cty. Sheriff’s Dep’t*, 833 F.3d 1048, 1056 (9th Cir. 2016) (internal quotation marks omitted).

### **3. Factual Allegations**

Plaintiff is a prisoner in the custody of the Idaho Department of Correction, currently incarcerated at the Idaho State Correctional Center. Plaintiff alleges that detectives, including Defendant Luis Chappa from the Blackfoot Police Department, illegally interrogated Plaintiff and accused him of fraud and forgery. *Compl.*, Dkt. 1, at 1. Plaintiff states that these interrogators committed various constitutional and state law violations in their pursuit of Plaintiff on these criminal charges, including a Fifth Amendment violation for failing to give *Miranda* warnings and a Sixth Amendment violation for denying Plaintiff's request to speak to an attorney. *Id.* at 1–2. Plaintiff also complains of a prosecutor's failure to appear at Plaintiff's arraignment, a lack of evidence against Plaintiff, a double jeopardy violation, and a refusal "to consider circumstances or motions." *Id.* at 2–3.

### **4. Discussion**

Plaintiff has not alleged sufficient facts to proceed with the Complaint. The Court will, however, grant Plaintiff 60 days to amend the Complaint. Any amended complaint should take into consideration the following.

#### ***A. Standards of Law***

Plaintiff brings claims under 42 U.S.C. § 1983, the civil rights statute. To state a plausible civil rights claim, a plaintiff must allege a violation of rights protected by the Constitution or created by federal statute proximately caused by conduct of a person acting under color of state law. *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To be liable under § 1983, "the defendant must possess a purposeful, a knowing, or possibly a

reckless state of mind.” *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2472 (2015). Negligence is not actionable under § 1983, because a negligent act by a public official is not an abuse of governmental power but merely a “failure to measure up to the conduct of a reasonable person.” *Daniels v. Williams*, 474 U.S. 327, 332 (1986).

Governmental officials generally are not liable for damages in their individual capacities under § 1983 unless they personally participated in the alleged constitutional violations. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *see also Iqbal*, 556 U.S. at 677 (“[E]ach Government official, his or her title notwithstanding, is only liable for his or her own misconduct.”). Section 1983 does not allow for recovery against an employer or principal simply because an employee or agent committed misconduct. *Taylor*, 880 F.2d at 1045.

However, “[a] defendant may be held liable as a supervisor under § 1983 ‘if there exists ... a sufficient causal connection between the supervisor’s wrongful conduct and the constitutional violation.’” *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)). A plaintiff can establish this causal connection by alleging that a defendant (1) “set[] in motion a series of acts by others”; (2) “knowingly refus[ed] to terminate a series of acts by others, which [the supervisor] knew or reasonably should have known would cause others to inflict a constitutional injury”; (3) failed to act or improperly acted in the training, supervision, or control of his subordinates”; (4) “acquiesc[ed] in the constitutional deprivation”; or (5) engag[ed] in “conduct that showed a reckless or callous indifference to the rights of others.” *Id.* at 1205–09.

To bring a § 1983 claim against a municipality—a local governmental entity such

as the Blackfoot Police Department, the Bannock County Jail, or the Bingham County Sheriff's Department—a plaintiff must allege that the execution of an official policy or unofficial custom inflicted the injury of which the plaintiff complains, as required by *Monell v. Department of Social Services of New York*, 436 U.S. 658, 694 (1978). Under *Monell*, the requisite elements of a § 1983 claim against a municipality are the following: (1) the plaintiff was deprived of a constitutional right; (2) the municipality had a policy or custom; (3) the policy or custom amounted to deliberate indifference to plaintiff's constitutional right; and (4) the policy or custom was the moving force behind the constitutional violation. *Mabe v. San Bernardino Cnty.*, 237 F.3d 1101, 1110–11 (9th Cir. 2001). Further, a municipality or private entity performing a state function “may be held liable under § 1983 when the individual who committed the constitutional tort was an official with final policy-making authority or such an official ratified a subordinate’s unconstitutional decision or action and the basis for it.” *Clouthier v. County of Contra Costa*, 591 F.3d 1232, 1250 (9th Cir. 2010), *overruled in part on other grounds by Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016) (en banc).

An unwritten policy or custom must be so “persistent and widespread” that it constitutes a “permanent and well settled” practice. *Monell*, 436 U.S. at 691 (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167–168 (1970)). “Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

A claim that a supervisor or training official failed to adequately train subordinates ordinarily requires that, “in light of the duties assigned to specific officers or employees[,] the need for more or different training [was] so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the [supervisor or training official] can reasonably be said to have been deliberately indifferent to the need.” *City of Canton v. Harris*, 489 U.S. 378, 390 (1989). That is, to maintain a failure-to-train claim, a plaintiff must allege facts showing a “pattern of violations” that amounts to deliberate indifference. *Connick v. Thompson*, 563 U.S. 51, 72 (2011).

Likewise, “a failure to supervise that is sufficiently inadequate may amount to deliberate indifference” that supports a § 1983 claim, but there generally must be a pattern of violations sufficient to render the need for further supervision obvious. *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (internal quotation marks omitted). That is, if a supervisory or training official had “knowledge of the unconstitutional conditions” through such a pattern of violations—including knowledge of the “culpable actions of his subordinates”—yet failed to act to remedy those conditions, that official can be said to have acquiesced “in the unconstitutional conduct of his subordinates” such that a causal connection between the supervisor and the constitutional violation is plausible. *Starr*, 652 F.3d at 1208.

A plaintiff cannot simply restate these standards of law in a complaint. Instead, a plaintiff must provide specific facts supporting the elements of each claim and must allege facts showing a causal link between each defendant and Plaintiff’s injury or damage. Alleging “the mere possibility of misconduct” is not enough. *Iqbal*, 556 U.S. at 679.

***B. Plaintiff's Claims Appear Barred by Heck v. Humphrey***

According to a habeas corpus petition that Plaintiff has filed in this Court, Plaintiff entered an *Alford* plea<sup>2</sup> to felony forgery in Idaho state court. Plaintiff was sentenced to a unified term of five years in prison with one and one-half years fixed. *See Allen v. Christensen*, Case No. 1:20-cv-00217-CWD, Dkt. 1 at 1–5.

Therefore, Plaintiff's claims in this action—all of which appear to relate to Plaintiff's forgery conviction—are likely barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the United States Supreme Court held that a civil rights claim “is not cognizable under § 1983” if the plaintiff's success would “render a conviction or sentence invalid.” *Id.* at 486–87. Thus, if a favorable verdict in a civil rights action “would necessarily imply the invalidity” of the plaintiff's conviction, the plaintiff must first show that “the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.” *Id.* at 487. As the Supreme Court later clarified, “a state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—*if* success in that action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson v. Dotson*, 544 U.S. 74, 81–82 (2005).

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<sup>2</sup> **Error! Main Document Only.** An *Alford* plea is the equivalent of a guilty plea, the only difference being that the defendant is not required to expressly admit guilt. *See North Carolina v. Alford*, 400 U.S. 25, 35 (1970) (holding that it is constitutionally permissible for a court to accept and sentence an individual upon “a plea by which a defendant does not expressly admit his guilt, but nonetheless waives his right to a trial and authorizes the court for purposes of the case to treat him as if he were guilty.”).

Moreover, the Supreme Court has made it clear that when a state prisoner seeks “a determination that he is entitled to immediate release or a speedier release from ... imprisonment, his sole federal remedy is a writ of habeas corpus.” *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Accordingly, release from incarceration is not an available remedy in a § 1983 action.

Plaintiff has not shown that his forgery conviction has been invalidated as required by *Heck*. Therefore, his claims are likely subject to dismissal. If Plaintiff files an amended complaint, he must set forth how the alleged violations of his rights relate to his current incarceration. If Plaintiff believes that his claims, if successful, would *not* imply the invalidity of his conviction, he must include detailed allegations regarding that conviction and explain his position.

### ***C. Other Deficiencies in the Complaint***

Even if Plaintiff’s claims are not barred by *Heck*, the Complaint fails to state a claim upon which relief may be granted. As an initial matter, the Complaint contains no factual allegations against Defendants Going, Simpson, or Chandler. Further, nothing in the Complaint plausibly suggests that any action of which Plaintiff complains was undertaken pursuant to a policy or custom of any of the city or county entities that are named as defendants.

Finally, Plaintiff’s allegations against Defendant Chappa do not state a plausible claim either. The Court is not required to accept Plaintiff’s conclusions that Chappa illegally interrogated him, harassed him, and violated his constitutional rights. *See Iqbal*, 556 U.S. at 678 (“[T]he tenet that a court must accept as true all of the allegations contained

in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). And, contrary to Plaintiff’s assertion, police officers do not commit perjury, or otherwise violate the law, by lying to suspects in interrogation. Though police deception is one factor to be considered in determining whether a statement offered by an accused is voluntary, such deception alone does not violate the Constitution. *See, e.g., Frazier v. Cupp*, 394 U.S. 731, 739 (1969) (“The fact that the police misrepresented the statements that [defendant’s cousin] had made is, while relevant, insufficient in our view to make this otherwise voluntary confession inadmissible. These cases must be decided by viewing the totality of the circumstances, and on the facts of this case we can find no error in the admission of petitioner’s confession.”) (internal citation and internal quotation marks omitted).

## 5. Standards for Amended Complaint

If Plaintiff chooses to amend the Complaint, Plaintiff must demonstrate how the actions complained of have resulted in a deprivation of Plaintiff’s constitutional rights. *See Ellis v. Cassidy*, 625 F.2d 227, 229 (9th Cir. 1980), *abrogated on other grounds by Kay v. Ehler*, 499 U.S. 432 (1991). Plaintiff must also allege a sufficient causal connection between each defendant’s actions and the claimed deprivation. *Taylor*, 880 F.2d at 1045; *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). “Vague and conclusory allegations of official participation in civil rights violations are not sufficient to withstand a motion to dismiss” or to survive screening under 28 U.S.C. §§ 1915 and 1915A. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982); *see also Iqbal*, 556 U.S. at 678 (“Nor does a complaint suffice if it tenders naked assertions devoid of further factual

enhancement.” (internal quotation marks and alteration omitted)).

Rather, for each cause of action against each defendant, Plaintiff must state the following: (1) the name of the person or entity that caused the alleged deprivation of Plaintiff’s constitutional rights; (2) facts showing the defendant is a state actor (such as state employment or a state contract) or a private entity performing a state function; (3) the dates on which the conduct of the defendant allegedly took place; (4) the specific conduct or action Plaintiff alleges is unconstitutional; (5) the particular federal constitutional provision (or state law provision) Plaintiff alleges has been violated; (6) facts alleging that the elements of the violation are met; (7) the injury or damages Plaintiff personally suffered; and (8) the particular type of relief Plaintiff is seeking from each defendant. In addition, Plaintiff must establish that his claims are not barred by *Heck v. Humphrey*, as discussed in detail above.

Further, any amended complaint must contain all of Plaintiff’s allegations in a single pleading and cannot rely upon, attach, or incorporate by reference other pleadings or documents. Dist. Idaho Loc. Civ. R. 15.1 (“Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended. The proposed amended pleading must be submitted at the time of filing a motion to amend.”); *see also Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) (“[An] amended complaint supersedes the original, the latter being treated thereafter as non-existent.”), *overruled in part on other grounds by Lacey v. Maricopa County*, 693 F.3d 896, (9th Cir. 2012) (en banc); *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1990) (holding that the district court erred by entering

judgment against a party named in the initial complaint, but not in the amended complaint).

Plaintiff must set forth each different factual allegation in a separate numbered paragraph. The amended complaint must be legibly written or typed in its entirety, and it should be clearly designated as the “First Amended Complaint.” Plaintiff’s name and address should be clearly printed at the top left corner of the first page of each document filed with the Court.

If Plaintiff files an amended complaint, Plaintiff must also file a “Motion to Review the Amended Complaint.” If Plaintiff does not amend within 60 days, or if the amendment does not comply with Rule 8, this case may be dismissed without further notice. *See Knapp v. Hogan*, 738 F.3d 1106, 1110 (9th Cir. 2013) (“When a litigant knowingly and repeatedly refuses to conform his pleadings to the requirements of the Federal Rules, it is reasonable to conclude that the litigant simply *cannot* state a claim.”).

## ORDER

**IT IS ORDERED** that Plaintiff has 60 days within which to file an amended complaint as described above. If Plaintiff does so, Plaintiff must file (along with the amended complaint) a Motion to Review the Amended Complaint. If Plaintiff does not amend within 60 days, this case may be dismissed without further notice.



DATED: June 3, 2020

  
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David C. Nye  
Chief U.S. District Court Judge