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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GREGORY SHEHEE,)	NO. CV 08-2277-FMC(E)
)	
Plaintiff,)	
)	
v.)	MEMORANDUM AND ORDER DISMISSING
)	
LERoy BACA, L.A. COUNTY SHERIFF,)	THIRD AMENDED COMPLAINT
et al.,)	
)	
)	
Defendants.)	
)	
)	

BACKGROUND

Plaintiff filed this civil rights action on April 9, 2008. The original Complaint challenged the conditions of confinement at the Los Angeles County Jail. Plaintiff alleged that, beginning February 2, 2001, he was a civil detainee confined at the Los Angeles County Jail "Twin Towers" facility pending civil proceedings under California's Sexually Violent Predators Act, California Welfare and

1 Institutions Code § 6600 et seq. (the "SVPA") (Complaint, pp. 2, 5).¹

2
3 By Memorandum and Order issued on May 2, 2008, the Court found
4 the Complaint deficient in numerous respects, and dismissed the
5 Complaint with leave to amend. On August 22, 2008, Plaintiff filed a
6 First Amended Complaint.

7
8 The First Amended Complaint, which again appeared to challenge
9 Plaintiff's conditions of confinement while a detainee at the jail,
10 referenced thirty-three "appendices," of which Plaintiff actually
11 filed thirty. The stack of filed appendices was over a foot high.
12 These appendices contained hundreds of inmate requests and grievances
13 submitted by Plaintiff to jail authorities (including a number of
14 illegible documents), Plaintiff's medical records (some of which were
15 illegible), documents reflecting other inmates' dietary restrictions,
16 at least a hundred letters to Plaintiff from the American Civil
17 Liberties Union apparently responding to Plaintiff's requests for
18 assistance, and many other unnumbered documents of uncertain
19 significance.

20 On September 5, 2008, the Court issued an Order dismissing the

21
22 ¹ "The SVPA authorizes the state to seek the involuntary
23 commitment of any person who has been convicted of certain
24 enumerated violent sex offenses against at least two victims and
25 who has a diagnosed mental disorder that makes the person a
26 dangerous likely recidivist." Jones v. Blanas, 393 F.3d 918, 923
27 (9th Cir. 2004), cert. denied, 546 U.S. 820 (2005) (citing Cal.
28 Welf. & Inst. Code §§ 6600(a)(1), 6601(a)(1)). Until 2006, those
persons found to be sexually violent predators ("SVPs")
periodically were returned to the county of their latest
conviction for proceedings on petitions for further civil
commitment. See Cal. Welf. & Inst. Code §§ 6601, 6604. Section
6604 now provides that SVPs can be committed for indeterminate
terms. See id.

1 First Amended Complaint with leave to amend. The Court advised
2 Plaintiff that the First Amended Complaint violated Rule 8 of the
3 Federal Rules of Civil Procedure, which requires that a complaint
4 contain a "short and plain" statement of the claim for relief, and
5 that "[e]ach averment of a pleading shall be simple, concise, and
6 direct." Fed. R. Civ. P. 8(a), (e).

7
8 After seeking and receiving several extensions of time, Plaintiff
9 filed a Second Amended Complaint on May 1, 2009. Also on May 1, 2009,
10 Plaintiff filed "Plaintiff's Request to Move Appendices (Exhibits)
11 From First Amended Complaint to Second Amended Complaint" ("Request to
12 Move Appendices"), seeking to "move" all of the appendices to the
13 First Amended Complaint to the Second Amended Complaint. Much of the
14 Second Amended Complaint was identical to the First Amended Complaint,
15 and contained numerous references to the appendices.

16
17 On May 13, 2009, the Court issued an Order dismissing the Second
18 Amended Complaint with leave to amend, and denying Plaintiff's request
19 to "move" the appendices of the First Amended Complaint to the Second
20 Amended Complaint. The Court advised Plaintiff that the Second
21 Amended Complaint, like the First Amended Complaint, violated Rule 8
22 of the Federal Rules of Civil Procedure.

23
24 On June 9, 2009, Plaintiff filed the operative Third Amended
25 Complaint ("TAC"). On August 25, 2009, Defendant Gloria Molina
26 ("Defendant Molina") filed a Motion to Dismiss the Third Amended
27 Complaint. On August 25, 2009, Defendant Lee Baca ("Defendant Baca")
28 also filed a Motion to Dismiss the Third Amended Complaint. Plaintiff

1 filed oppositions to the motions on September 11, 2009 and
2 September 17, 2009, respectively ("Plaintiff's Oppositions"). On
3 October 1, 2009, Defendant Baca filed a reply and evidentiary
4 objections to Plaintiff's opposition. The Court has taken both
5 motions under submission without oral argument. See L.R. 7-15;
6 August 25 and 26, 2009 Minute Orders.

7
8 **SUMMARY OF ALLEGATIONS IN THE THIRD AMENDED COMPLAINT**
9

10 Like the Second Amended Complaint, the Third Amended Complaint
11 challenges jail conditions to which Plaintiff assertedly was subjected
12 during Plaintiff's detention at the Los Angeles County Jail over an
13 eight-year period (i.e., February 2, 2000 through February 25, 2008)
14 (TAC ¶ 16). Plaintiff generally alleges that the defendants (the
15 Sheriff of Los Angeles County, employees and agents of the Los Angeles
16 County Sheriff's Department, and the County of Los Angeles) were
17 deliberately indifferent to Plaintiff's serious medical needs, refused
18 to give Plaintiff "more considerate treatment" than received by his
19 criminal detainee counterparts,² engaged in racial discrimination, and
20

21 ² Plaintiff cites Youngberg v. Romeo, 457 U.S. 307, 324
22 (1992) in this regard. In Youngberg, the Supreme Court held
23 that, in addition to the right to adequate food, shelter,
24 clothing, and medical care, persons involuntarily committed to
25 state institutions for the mentally retarded have
26 constitutionally protected liberty interests under the due
27 process clause of the Fourteenth Amendment to "reasonable care
28 and safety, reasonably nonrestrictive confinement conditions, and
such training as may be required for these interests." While the
Court noted that "[p]ersons who have been involuntarily committed
are entitled to more considerate treatment and conditions of
confinement than criminals whose conditions of confinement are
designed to punish," the rights are not absolute, but subject to
restriction where reasonably related to legitimate constraints

(continued...)

1 conspired to deny Plaintiff his civil rights (TAC ¶ 1).

2
3 Plaintiff alleges, among other things, that various jail
4 officials assertedly: (1) subjected Plaintiff to punitive conditions
5 of confinement substantially worse than those conditions he faces as a
6 detainee at the Coalinga State Hospital (TAC ¶¶ 24-29); (2) denied
7 Plaintiff medical care and medication (TAC ¶¶ 30-47); (3) assaulted
8 Plaintiff and engaged in other acts of retaliation for Plaintiff's
9 filing of administrative grievances (TAC ¶¶ 48-52, 56-59); (4) denied
10 Plaintiff his special diet (TAC ¶ 52); (5) placed Plaintiff in
11 administrative segregation with criminal detainees and prisoners,
12 without a hearing (TAC ¶¶ 53-55, 60); and (6) denied Plaintiff law
13 library access and access to legal supplies (TAC ¶¶ 61-66). Plaintiff
14 generally alleges that all of the defendants: (1) "by personal acts or
15 omissions to act, implemented policies, procedures, and customs so
16 deficient that they repudiated plaintiff's constitutional rights"; and
17 (2) "personally participated in the deprivation of plaintiff's
18 constitutional rights, knew of the violations, and failed and refused
19 to act to prevent them" (TAC ¶¶ 67-68). Plaintiff seeks injunctive
20 relief against the defendants from subjecting Plaintiff to conditions
21 of confinement that are the same as, similar to, or more restrictive
22 than criminal detainees. Plaintiff also seeks compensatory and

23
24
25 ²(...continued)

26 under which the institutions necessarily operate. Id. at 321-22,
27 324 (citation omitted). Thus, while Plaintiff cannot be
28 subjected to conditions of confinement that amount to punishment,
he is subject to "[l]egitimate, non-punitive government
interests" including "maintaining jail security, and effective
management of [the] detention facility." Jones v. Blanas, 393
F.3d at 932-33.

1 punitive damages (TAC p. 13).
2

3 Defendants Baca and Molina, in their individual capacities only,
4 have moved to dismiss the Third Amended Complaint for failure to
5 allege facts with sufficient specificity to show these Defendants'
6 personal involvement in the alleged constitutional deprivations.
7 Defendant Molina also asserts that she is immune from liability.
8

9 DISCUSSION

10 11 I. Standards Governing Motions to Dismiss

12
13 Under Federal Rule of Civil Procedure 12(b)(6), a court may
14 dismiss a complaint for failure to state a claim upon which relief may
15 be granted where: (1) there is no cognizable legal theory; or (2) the
16 complaint alleges insufficient facts to support a cognizable legal
17 theory. Zamani v. Carnes, 491 F.3d 990, 996-97 (9th Cir. 2007)
18 (quoting Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001)). The
19 Supreme Court recently explained that "to survive a motion to dismiss,
20 a complaint must contain sufficient factual matter, accepted as true,
21 to 'state a claim to relief that is plausible on its face.' A claim
22 has facial plausibility when the plaintiff pleads factual content that
23 allows the court to draw the reasonable inference that a defendant has
24 acted unlawfully." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)
25 ("Iqbal") (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 556, 570
26 (2007) ("Twombly"). "[A] formulaic recitation of the elements of a
27 cause of action will not do." Twombly, 550 U.S. at 555.
28

1 "While legal conclusions can provide the framework of a
2 complaint, they must be supported by factual allegations. When there
3 are well-pleaded factual allegations, a court should assume their
4 veracity and then determine whether they plausibly give rise to an
5 entitlement to relief." Iqbal, 129 S. Ct. at 1950. Determining
6 whether a complaint states a plausible claim for relief is a matter
7 left to the court's experience and common sense, and requires "more
8 than a sheer possibility that a defendant has acted unlawfully." Id.
9 at 1949 (citing Twombly, 550 U.S. at 556). "Where a complaint pleads
10 facts that are 'merely consistent with' a defendant's liability, it
11 'stops short of the line between possibility and plausibility of
12 entitlement to relief.'" Id. (quoting Twombly, 550 U.S. at 557).³

13
14 In ruling on a motion to dismiss, the Court must take as true all
15 non-conclusory factual allegations in the Complaint, and must construe
16 the Complaint in the light most favorable to Plaintiff. See al-Kidd
17 v. Ashcroft, 580 F.3d 949, 964 (9th Cir. 2009); Moss v. U.S. Secret
18 Service, 572 F.3d at 969; Fed. R. Civ. P. 12(b)(6). The Court may
19 consider matters properly the subject of judicial notice. See Lee v.
20 City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001). The Court
21 also may consider exhibits attached to the Complaint. See Hal Roach

22
23
24 ³ As the Court has explained, Rule 8 of the Federal Rules
25 of Civil Procedure requires that a complaint contain a "short and
26 plain" statement of the claim for relief, and that "[e]ach
27 averment of the pleading shall be simple, concise, and direct."
28 Fed. R. Civ. P. 8(a), (e). While Twombly and Iqbal affirm that
Rule 8 does not require that a complaint contain "detailed
factual allegations," a plaintiff must plead more than conclusory
allegations to "unlock the doors of discovery." Iqbal, 129 S.
Ct. at 1950-51; see also Moss v. U.S. Secret Service, 572 F.3d
962, 967-69 (9th Cir. 2009) (discussing Twombly and Iqbal).

1 Studios v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1555 n.19 (9th
2 Cir. 1990). The Court otherwise may not consider matters outside the
3 Complaint. See id.; Arpin v. Santa Clara Valley Transportation
4 Agency, 261 F.3d 912, 925 (9th Cir. 2001); Schneider v. Cal. Dept. of
5 Corrections, 151 F.3d 1194, 1197 n.1 (9th Cir. 1988) ("In determining
6 the propriety of a Rule 12(b)(6) dismissal, a court *may not* look
7 beyond the Complaint to a plaintiff's moving papers, such as a
8 memorandum in opposition to a defendant's motion to dismiss.")
9 (emphasis original).⁴

10
11 The Court must construe Plaintiff's pro se Complaint liberally.
12 See Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Shakur v. Schriro,
13 514 F.3d 878, 892 (9th Cir. 2009). To the extent that a ground for
14 dismissal applies to claims asserted against non-moving Defendants,
15 the Court may dismiss in favor of non-moving Defendants, as well as
16 moving Defendants. See Silverton v. Dep't of Treasury, 644 F.2d 1341,
17 1345 (9th Cir.), cert. denied, 454 U.S. 895 (1981) (court may dismiss
18 action on its own motion in favor of non-moving defendant "where such
19 defendants are in a position similar to that of moving defendants or
20 where claims against such defendants are integrally related").

21 ///

22
23 **II. Plaintiff May Be Able to Plead a Cognizable Substantive Due**

24 _____
25 ⁴ Therefore, in determining the sufficiency of the Third
26 Amended Complaint, the Court has not considered the exhibits
27 Plaintiff filed with Plaintiff's Oppositions. The exhibits
28 consist of pages of handwritten and typed line entries
purportedly documenting Plaintiff's grievances made to numerous
individuals, including Defendants Baca and Molina. See Exhibit A
filed with Plaintiff's Oppositions.

1 Process Claim if the Conditions of His Confinement as a Civilly-
2 Committed SVP Amounted to Punishment. Plaintiff Has Not Yet
3 Pleaded Sufficient Facts to State Such a Claim, However.
4

5 As an initial matter, the Court notes that Plaintiff may be able
6 to plead a cognizable claim for relief based on the conditions of his
7 confinement. The Fourteenth Amendment applies to the conditions of
8 confinement for civil detainees, such as sexually violent predators,
9 and requires the government to "do more than provide the minimal
10 civilized measure of life's necessities" for such detainees. Jones v.
11 Blanas, 393 F.3d at 931 (internal quotation omitted). "[D]ue process
12 requires that the nature and duration of commitment bear some
13 reasonable relation to the purpose for which the individual is
14 committed." Id. (quoting Jackson v. Indiana, 406 U.S. 715, 738
15 (1972)). This requirement means that, "[a]t a bare minimum," a civil
16 detainee cannot be subjected to conditions that amount to punishment.
17 Id. (citation omitted). "[W]hen a SVP detainee is confined in
18 conditions identical to, similar to, or more restrictive than those in
19 which his criminal counterparts are held, we presume that the detainee
20 is being subjected to 'punishment.'" Id. at 932 (citing Sharp v.
21 Weston, 233 F.3d 1166, 1172-73 (9th Cir. 2000)). Additionally, "when
22 an individual awaiting SVPA adjudication is detained under conditions
23 more restrictive than those the individual would face following SVPA
24 commitment, we presume the treatment is punitive." Id. at 933.

25
26 As summarized above, Plaintiff generally alleges that he was
27 treated identically to, or worse than, his criminal counterparts at
28 the Los Angeles County Jail based on unspecified acts, omissions,

1 policies, procedures, and/or customs. Plaintiff alleges that
2 Defendant Baca and the County have subjected Plaintiff to conditions
3 "substantially worse" than he would face upon commitment to Coalinga
4 State Hospital, including: (1) assault by penal detainees; (2) denial
5 of the purported right to confidential telephone calls, confidential
6 contact visiting, and confidential mail; (3) denial of the right to
7 "adequate" clean showers and hygiene; (4) denial of the right to
8 "adequate" access to a law library and courts; (5) denial of the
9 purported right to "adequate" outdoor and indoor exercise and
10 recreation; (6) denial of the purported right to "adequate"
11 socialization; (7) denial of the purported right to freedom "from
12 isolation and seclusion"; (8) denial of the right to "adequate" and
13 sanitary meals; (9) denial of the right to freedom from excessive and
14 unnecessary physical restraints; (10) denial of the right to freedom
15 from unreasonable searches; (11) denial of the right to be housed
16 separately from and to be kept safe from criminal detainees; and
17 (12) denial of the right to "adequate" and "more considerate" medical
18 care mandated for civil detainees (TAC ¶ 24). Apart from the
19 allegations concerning the Defendants' alleged indifference to
20 Plaintiff's medical needs and denial of access to courts (discussed
21 below), Plaintiff does not allege any specific facts with respect to
22 these alleged conditions, however.

23
24 Plaintiff's entitlement to relief requires more than the "labels
25 and conclusions" set forth above. Twombly, 550 U.S. at 555. If
26 Plaintiff chooses to pursue a Fourteenth Amendment Claim based on the
27 conditions of his confinement, Plaintiff must allege facts showing how
28 he was subjected to these alleged deprivations.

1 **III. The Complaint Fails to State Claims for Relief Against Defendants**
2 **Baca and Molina in their Individual Capacities; Plaintiff Has Not**
3 **Alleged Sufficient Personal Involvement.**
4

5 As Defendants Baca and Molina correctly assert, an individual
6 defendant is not liable on a civil rights claim unless the facts
7 establish the defendant's personal involvement in the constitutional
8 deprivation or a causal connection between the defendant's wrongful
9 conduct and the alleged constitutional deprivation. See Hansen v.
10 Black, 885 F.2d 642, 646 (9th Cir. 1989); Johnson v. Duffy, 588 F.2d
11 740, 743-44 (9th Cir. 1978); see also Bressi v. Ford, 575 F.3d 891,
12 898 n.8 (9th Cir. 2009) (reaffirming same). Plaintiff may not sue
13 Defendant Baca or Defendant Molina or any supervisor on a theory that
14 a supervisor is liable for the acts of his or her subordinates. See
15 Polk County v. Dodson, 454 U.S. 312, 325 (1981); Gibson v. County of
16 Washoe, Nev., 290 F.3d 1175, 1185 (9th Cir. 2002), cert. denied, 537
17 U.S. 1106 (2003); see also Iqbal, 129 S. Ct. at 1948 (noting in Bivens
18 action, the "federal analog" to section 1983 suits, that "Government
19 officials may not be held liable for the unconstitutional conduct of
20 their subordinates on a theory of respondeat superior"). A supervisor
21 may be held liable in his or her individual capacity "for [his or her]
22 own culpable action or inaction in the training, supervision or
23 control of [his or her] subordinates." Watkins v. City of Oakland,
24 Cal., 145 F.3d 1087, 1093 (9th Cir. 1998) (quoting Larez v. City of
25 Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991)). As Iqbal and Twombly
26 confirm, to state a claim "[a] plaintiff must allege facts, not simply
27 conclusions, that show that an individual was personally involved in
28 the deprivation of his civil rights." Barren v. Harrington, 152 F.3d

1 1193, 1194 (9th Cir. 1998), cert. denied, 525 U.S. 1154 (1999); Iqbal,
2 129 S. Ct. at 1949-50; Twombly, 550 U.S. at 555.

3
4 As discussed below, Plaintiff has not alleged facts sufficient to
5 show the requisite personal involvement by either Defendant Baca or
6 Defendant Molina.

7
8 **A. The Allegations Against Defendant Baca Are Insufficient.**

9
10 With respect to Defendant Baca, Plaintiff alleges:

11
12 Defendant [Baca] is the Sheriff of Los Angeles County, and
13 in overseeing and managing the Los Angeles County Jail
14 represents defendant LOS ANGELES COUNTY. In his capacity as
15 Sheriff, he is responsible for the administration and
16 management of Los Angeles County Jail facilities, including
17 decisions concerning staff deployment, discipline, and
18 training regarding the housing, care, and handling of
19 plaintiff.

20
21 (TAC ¶ 5). Plaintiff further alleges that Defendant Baca, in
22 cooperation with the County, is "responsible for establishing,
23 developing, and implementing all of the policies, practices, and
24 customs at all Los Angeles County Jail facilities" (TAC ¶ 18).
25 Plaintiff alleges that Defendant Baca is obligated to provide quarters
26 for Plaintiff and to provide Plaintiff with "more considerate
27 treatment" than the treatment provided to criminal detainees, and may
28 not impose conditions "that are identical to, similar to, or more

1 restrictive than, those in which plaintiff's criminal counterparts are
2 held" (TAC ¶ 20-21). Plaintiff alleges that Defendant Baca and others
3 are "adamant" about treating Plaintiff "exactly the same as, or more
4 restrictive than" criminal detainees (TAC ¶ 23).

5
6 Plaintiff alleges that Defendant Baca's written policies and
7 procedures for the jail system do not recognize and enforce the rights
8 of civilly detained persons, denying "Equal Protection of the Laws"
9 (TAC ¶ 25). Plaintiff does not include a recitation of any alleged
10 written policies. Rather, Plaintiff generally alleges that the
11 policies are enforced for the sole purposes of punishment (TAC ¶ 26).
12 Plaintiff alleges that Defendant Baca refuses to train County
13 employees regarding the rights of civil detainees established by 42
14 U.S.C. sections 482.13 and 483.10, California Welfare and Institutions
15 Code sections 5325 and 5325.1, and California Penal Code section
16 4002(b) (TAC ¶¶ 27-28).⁵ Plaintiff asserts that the alleged refusal

17
18 ⁵ Plaintiff's citation to 42 U.S.C. sections 482.13 and
19 483.10 appears to be an error. No such sections exist.
20 California Penal Code section 4002, as amended in 2001, provides
21 that inmates held in county jails pending civil process under the
22 SVP laws shall be held in administrative segregation (i.e.,
"separate and secure housing that does not involve any
deprivation of privileges other than what is necessary to protect
the inmates and staff"). See Cal. Penal Code § 4002(b).

23 California Welfare and Institutions Code sections 5325 and
24 5325.1, as applicable to Plaintiff under California Penal Code
25 section 1610(c), list certain rights available to persons with
26 mental illnesses who are involuntarily detained for evaluation or
27 treatment. See Cal. Welf. & Inst. Code §§ 5325, 5325.1 (listing
28 rights); see also Cal. Penal Code § 1610 (providing that persons
confined under this section, which include SVPs, may be housed in
accordance with California Penal Code section 4002 and have a
right to "an explanation of rights in the manner prescribed in
Section 5325 of the Welfare and Institutions Code").

(continued...)

1 to train County employees resulted in him receiving inadequate medical
2 care, being assaulted and placed in "punitive" segregation, being
3 subjected to retaliation for filing administrative grievances, placing
4 Plaintiff in the highest custody level, and limiting law library
5 access (TAC ¶¶ 30-66). Finally, Plaintiff alleges that "all
6 defendants, personally participated in the deprivation of Plaintiff's
7 constitutional rights, knew of the violations, and failed and refused
8 to act to prevent them, in violation of the First, Fourth, and
9 Fourteenth Amendments to the Constitution . . ." (TAC ¶ 68).

10
11 Each of the above allegations are conclusory, and fail to
12 describe with specificity Defendant Baca's alleged involvement in the
13 constitutional deprivations Plaintiff claims. Plaintiff's bare
14 allegations that Defendant Baca is responsible for overseeing the jail
15 and has implemented assertedly impermissible policies with respect to
16 the jail's housing of SVP detainees are inadequate. The Third Amended
17 Complaint does not allege any specific facts from which the Court
18 plausibly may infer that Defendant Baca had personal involvement in
19 the conditions of confinement at issue. Accordingly, Plaintiff's
20 claim against Defendant Baca in his individual capacity is deficient
21 under Rule 8. Compare Iqbal, 129 S. Ct. at 1951-52 (finding

22 _____
23 ⁵(...continued)

24 To the extent Plaintiff may contend that the conditions of
25 his confinement violate these state laws, Plaintiff has not
26 alleged sufficient facts to support a civil rights claim.
27 Plaintiff must allege a violation of an established
28 constitutional right. "[A] violation of state law may not form
the basis for a section 1983 action unless it causes a
deprivation of a right protected by the Constitution." Sundquist
v. Philp, 2009 WL 2353267 *1 (9th Cir. Jul. 30, 2009) (citing
Lovell v. Poway Unified Sch. Dist., 90 F.3d 367, 370 (9th Cir.
1996)).

1 insufficient facts to support a claim where plaintiff generally
2 alleged that Attorney General adopted a policy approving "restrictive
3 conditions of confinement" for pretrial detainees with suspected
4 terrorist connections in the wake of the September 11 terrorist
5 attacks); al-Kidd v. Ashcroft, 580 F.3d at 977 (also finding
6 insufficient facts to support a conditions of confinement claim where
7 plaintiff alleged that the Attorney General promulgated and approved a
8 policy causing plaintiff to be subjected to harsh conditions of
9 confinement).

10
11 **B. The Allegations Against Defendant Molina Are Insufficient.**

12
13 The Third Amended Complaint contains only one allegation
14 identifying Defendant Molina. Plaintiff alleges:

15
16 Defendant [Molina] at all times relevant herein was a Los
17 Angeles County Supervisor, and as such is responsible for
18 the overall conditions of plaintiff's "civil detention"
19 within her district of Los Angeles County, wherein
20 Los Angeles County Jail Men's Central Jail and Twin Towers
21 Correctional Facility are located. In her capacity as a
22 Los Angeles County Supervisor, defendant Molina is
23 responsible for the funding of, and the enforcement of,
24 mandates to preserve and protect plaintiff's rights under
25 the Constitution and laws of the United States while
26 confined in Los Angeles County Jail.

27
28 (TAC ¶ 7). As with the allegations against Defendant Baca, the

1 allegation against Defendant Molina is insufficient to state a claim
2 for relief against Defendant Molina in her individual capacity. The
3 Third Amended Complaint does not allege any specific facts from which
4 the Court plausibly may infer that Defendant Molina's direction,
5 policies, decisions or failures to act⁶ constituted actionable
6 personal involvement in the conditions of confinement at issue.
7 Compare Warren v. Kolender, 2007 WL 951833 at *4 (S.D. Cal. Mar. 13,
8 2007) (pre-Iqbal case finding allegations insufficient to establish
9 liability for county board of supervisors, where plaintiff alleged the
10 board failed to adopt a policy to prevent the county jail from housing
11 SVP detainees similarly to other inmates; plaintiff did not allege the
12 board had any policymaking authority with regard to the jail's housing
13 conditions).⁷

14 ///

15 ///

16
17 **IV. Plaintiff Has Not Alleged Facts Sufficient to State a Claim for**
18 **Denial of Access to the Courts.**

19
20 _____
21 ⁶ After Iqbal, the issue of whether an individual's
22 knowing failure to act, alone, can justify section 1983 liability
23 is unclear. Iqbal noted that "purpose rather than knowledge" is
24 required to impose liability on defendants for discharging their
25 responsibilities in a way that may have resulted in
26 constitutional deprivations. See Iqbal, 129 S. Ct. at 1949
(discussing same); see also al-Kidd v. Ashcroft, 580 F.3d at 976
& n.25 (acknowledging dissent's contention that the "knowing
failure to act" standard did not survive Iqbal, but refusing to
reach the issue).

27 ⁷ Because the allegations of the Third Amended Complaint
28 are insufficient to state a claim against Defendant Molina in her
individual capacity, the Court does not reach the issue of
whether Defendant Molina is immune from suit.

1 Plaintiff alleges that Defendants limited his law library access
2 and his confidential communications with his attorney. To plead a
3 cognizable claim for denial of access to the courts, Plaintiff must
4 allege, inter alia, that the denial of such access caused him "actual
5 injury." Lewis v. Casey, 518 U.S. 343, 350-55 (1996); Barren v.
6 Harrington, 152 F.3d at 1195. Plaintiff must allege that some
7 specific non-frivolous legal claim has been frustrated or impeded.
8 Here, Plaintiff has not alleged the requisite actual injury.

9
10 **V. The Complaint Fails to State an Equal Protection Claim.**

11
12 To the extent Plaintiff alleges a violation of the Equal
13 Protection Clause based on his conditions of confinement (TAC ¶ 25),
14 the Third Amended Complaint is insufficient. Although Plaintiff
15 alludes to racial discrimination in the Complaint (TAC ¶ 1), Plaintiff
16 does not allege that his conditions of confinement were the result of
17 discrimination against Plaintiff as a member of a suspect class. To
18 state an Equal Protection claim that does not involve a suspect
19 classification, Plaintiff must allege specific facts from which the
20 Court plausibly may infer that Plaintiff was intentionally treated
21 differently from others similarly situated and that there was no
22 rational basis for the difference in treatment. See Iqbal; Village of
23 Willowbrook v. Lech, 528 U.S. 562, 564 (2000); Barren v. Harrington,
24 152 F.3d at 1194-95. The Third Amended Complaint alleges no such
25 specific facts.

26 **CONCLUSION AND ORDER**

27
28 For all of the foregoing reasons, the Third Amended Complaint is

1 dismissed with leave to amend. See Lopez v. Smith, 203 F.3d 1122,
2 1130 (9th Cir. 2000) (en banc). Plaintiff is granted leave to amend
3 to attempt to comply with the pleading requirements of Twombly and
4 Iqbal. See Moss v. U.S. Secret Service, 572 F.3d at 965. If
5 Plaintiff still wishes to pursue this action, he is granted thirty
6 (30) days from the date of this Memorandum and Order within which to
7 file a Fourth Amended Complaint. The Fourth Amended Complaint shall
8 be complete in itself. It shall not refer in any manner to any prior
9 complaint. Plaintiff may not add Defendants without leave of court.
10 See Fed. R. Civ. P. 21. Failure to file timely a Fourth Amended
11 Complaint may result in the dismissal of this action.

12
13 DATED: 10/22/09_____.

14
15 

16 _____
17 FLORENCE-MARIE COOPER
18 UNITED STATES DISTRICT JUDGE

19
20 PRESENTED this day of
21 October, 2009, by:

22
23 _____/S/_____
24 CHARLES F. DICK
25 UNITED STATES MAGISTRATE JUDGE
26
27
28