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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

|                       |   |                                  |
|-----------------------|---|----------------------------------|
| RONALD JAMES BREWER,  | ) | No. ED CV 11-01346-DMG (VBK)     |
|                       | ) |                                  |
| Plaintiff,            | ) | ORDER RE DISMISSAL WITH LEAVE TO |
|                       | ) | AMEND                            |
| v.                    | ) |                                  |
|                       | ) |                                  |
| FRANK TAYLOR, et al., | ) |                                  |
|                       | ) |                                  |
| Defendants.           | ) |                                  |
| _____                 | ) |                                  |

Ronald James Brewer (hereinafter referred to as "Plaintiff"), appearing pro per, filed a Civil Rights Complaint pursuant to 42 U.S.C. §1983 on September 12, 2011, pursuant to the Court's Order re Leave to File Action without Prepayment of Full Filing Fee. Plaintiff has named as Defendants Captain Frank Taylor and Lt. Gay Fredrickson in their individual capacities. (Complaint at 2-3.)

**STATEMENT OF FACTS**

Plaintiff alleges that Defendants were "deliberately indifferent" on March 8, 2011 in responding to Plaintiff's grievances. Plaintiff alleges that on March 7, 2011, he lodged a complaint against jail officials arguing that the 30-day review of an inmate's administrative

1 segregation placement accorded by the Riverside County Sheriff's  
2 department did not comport with due process. (Complaint at ¶ 18.)  
3 Plaintiff alleges that Defendant Lt. Fredrickson's response was  
4 provided within 24 hours of the initial complaint, which is unheard of  
5 in Plaintiff's experience with jail grievances, and the response  
6 references a vague reason ( which Plaintiff alludes is a ruse) for  
7 Plaintiff's placement in administrative segregation, even though no  
8 explanation for such placement was sought by Plaintiff in the March 7,  
9 2011 complaint. (Complaint at ¶ 19.) Plaintiff also alleges on March  
10 8, 2011, he received a response from Defendant Captain Taylor, which  
11 was a "cover or a ruse to silence and punish Plaintiff for his  
12 successful use of the jail's grievance system." (Complaint at ¶ 20.)  
13 Defendant Captain Taylor allegedly asserted in his response to  
14 Plaintiff's grievance that "you requested a written response as to  
15 your placement in administrative segregation". Defendant Lt.  
16 Fredrickson responded to your grievance dated March 7, 2011 regarding  
17 your placement in administrative segregation and provided you with a  
18 reason, thus satisfying Plaintiff's request for a written response.  
19 Id. Defendant Captain Taylor then stated in his March 8, 2011  
20 decision to suspend Plaintiff's grievance rights "based on your  
21 repeated grievances regarding the same issue." Plaintiff's grievance  
22 privilege was suspended. (Id.)

23 Plaintiff alleges a violation of his rights under the First  
24 Amendment by jail officials who retaliate against him by using the  
25 grievance procedure to silence and punish Plaintiff for his successful  
26 use of the grievance system to improve jail conditions. (Complaint at  
27 p. 5.)  
28



1 pleads factual content that allows the Court to draw the reasonable  
2 inference that the defendant is liable for the misconduct alleged.”  
3 Iqbal, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)(citing Twombly,  
4 550 U.S. at 556.) “The plausibility standard is not akin to a  
5 ‘probability requirement,’ but it asks for more than a sheer  
6 possibility that a defendant acted unlawfully.” (Id.) Although a  
7 complaint need not include “‘detailed factual allegations,’ ... [a]  
8 pleading that offers ‘labels and conclusions’ or ‘a formulaic  
9 recitation of the elements of the cause of action will not do.’”  
10 Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). The  
11 Complaint must contain “factual content that allows the court to draw  
12 the reasonable inference that the defendant is liable for the  
13 misconduct alleged.” Iqbal, 129 S.Ct. at 1949. “[W]here the well-  
14 pleaded facts do not permit the court to infer more than the mere  
15 possibility of misconduct, the complaint has alleged - but it has not  
16 ‘show[n]’ - ‘that the pleader is entitled to relief.’” (Id. at 1950  
17 [quoting Fed.R.Civ.P. 8(a)(2) (internal brackets omitted)].

18 In civil rights cases in which the Plaintiff appears pro se, the  
19 pleadings must be construed liberally, so as to afford the plaintiff  
20 the benefit of any doubt as to the potential validity of the claims  
21 asserted. Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 623  
22 (9<sup>th</sup> Cir. 1988). If, despite such liberal construction, the Court  
23 finds that the complaint should be dismissed for failure to state a  
24 claim, the Court has the discretion to dismiss the complaint with or  
25 without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9<sup>th</sup>  
26 Cir. 2000). A pro se litigant should be given leave to amend, unless  
27 it is clear that the deficiencies of the complaint cannot be cured by  
28 amendment. Lopez, 203 F.3d at 1130-31; Cato v. United States, 70 F.3d

1 1103, 1106 (9<sup>th</sup> Cir. 1995); Noll v. Carlson, 809 F.2d 1446, 1448 (9<sup>th</sup>  
2 Cir. 1987).

### 4 DISCUSSION

5 For all of the following reasons, the Complaint should be  
6 dismissed with leave to amend.

#### 8 **A. Section 1983 Requirements.**

9 In order to state a claim under section 1983, a plaintiff must  
10 allege that: (1) the defendants were acting under color of state law  
11 at the time the complained of acts were committed; and (2) the  
12 defendants' conduct deprived plaintiff of rights, privileges, or  
13 immunities secured by the Constitution or laws of the United States.  
14 West v. Atkins, 487 U.S. 42, 108 S.Ct. 2250 (1988); Karim-Panahi v.  
15 Los Angeles Police Dept., 839 F.2d 621, 624 (9th Cir. 1988); Haygood  
16 v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc), cert.  
17 denied, 478 U.S. 1020 (1986). Liability under section 1983 is  
18 predicated upon an affirmative link or connection between the  
19 defendants' actions and the claimed deprivations. See Rizzo v. Goode,  
20 423 U.S. 362, 372-73, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d  
21 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th  
22 Cir. 1978).

23 A person deprives another of a constitutional right,  
24 where that person "does an affirmative act, participates in  
25 another's affirmative acts, or omits to perform an act which  
26 [that person] is legally required to do that causes the  
27 deprivation of which complaint is made." [citation] Indeed,  
28 the "requisite causal connection can be established not only

1 by some kind of direct personal participation in the  
2 deprivation, but also by setting in motion a series of acts  
3 by others which the actor knows or reasonably should know  
4 would cause others to inflict the constitutional injury."

5 Johnson v. Duffy, 588 F.2d at 743-44.

6  
7 Plaintiff's claims against Defendants are in their individual  
8 capacities. An individual defendant is not liable on a civil rights  
9 claim unless the facts establish the defendant's personal involvement  
10 in the constitutional deprivation or a causal connection between the  
11 defendant's wrongful conduct and the alleged constitutional  
12 deprivation. See Hansen v. Black, 885 F.2d 642, 646 (9<sup>th</sup> Cir. 1984);  
13 Johnson v. Duffy, 588 F.2d 740, 743-44 (9<sup>th</sup> Cir. 1978).

14 In order to allege facts sufficient to show a jurisdictional  
15 basis for imposing liability, see Franklin v. Murphy, 745 F.2d 1221,  
16 1234 (9<sup>th</sup> Cir. 1984), Plaintiff must allege facts to show that the  
17 Defendants proximately caused the deprivation of rights of which  
18 Plaintiff complains, or that Defendants in a supervisory capacity  
19 failed to properly train or supervise personnel resulting in the  
20 alleged deprivation, [that the alleged deprivation resulted from  
21 official policy or custom for which Defendant was responsible], or  
22 that Defendant knew of the alleged misconduct and failed to act to  
23 prevent future misconduct.

24 A plaintiff "must allege facts, not simply conclusions, that show  
25 an individual was personally involved in the deprivation of his civil  
26 rights." Barren v. Harrington, 152 F.3d 1193, 1194 (9<sup>th</sup> Cir. 1998),  
27 cert. denied, 525 U.S. 1154, 119 S.Ct. 1058 (1999); see Iqbal, 129  
28 S.Ct. at 1950 (stating that a complaint must contain more than legal

1 conclusions to withstand dismissal for failure to state a claim).

2 Plaintiff's allegations regarding interference with his inmate  
3 appeals may intend to state a due process claim. In order to state a  
4 cause of action for deprivation of due process, a plaintiff must first  
5 establish the existence of a liberty interest for which the protection  
6 is sought. "[A prison] grievance procedure is a procedural right  
7 only, it does not confer any substantive right upon the inmates."  
8 Buckley v. Barlow, 997 F.2d 494, 495 (8<sup>th</sup> Cir. 1993). A prisoner has  
9 no constitutional right to an effective grievance or appeal procedure,  
10 and the mere participation of prison officials in Plaintiff's  
11 administrative appeal process is an insufficient basis in which to  
12 state a federal civil rights claim against such defendants. See also  
13 Ramirez v. Galaza, 334 F.3d 850, 860 (9<sup>th</sup> Cir. 2003)(no liberty  
14 interest in processing of appeals because no entitlement to a specific  
15 grievance procedure). Thus, the alleged actions of Defendants  
16 relating to Plaintiff's inmate appeals cannot form a basis for a §1983  
17 liability. Plaintiff does not have any stand-alone constitutional  
18 right related to processing of his inmate grievances. See Mann v.  
19 Adams, 855 F.2d 639, 640 (9<sup>th</sup> Cir. 1988). Because there is no right  
20 to any particular grievance process, it is impossible for due process  
21 to have been violated by ignoring or failing to properly process  
22 grievances.

23 Plaintiff also seems to couch his claim regarding the processing  
24 of inmate appeals in the form of a "retaliation" claim. An action  
25 taken in retaliation for the exercise of a federally protected right  
26 is actionable under §1983. See Hines v. Gomez, 108 F.3d 265, 267 (9<sup>th</sup>  
27 Cir. 1997); Pratt v. Rowland, 65 F.3d 802, 806 (9<sup>th</sup> Cir. 1995). To  
28 state a viable claim for retaliation and violation of the First

1 Amendment in the prison context, a plaintiff must show five basic  
2 elements: "(1) an assertion that a state actor took some adverse  
3 action against an inmate (2) because of (3) that prisoner's protected  
4 conduct, and that such action (4) chilled the inmates exercise of his  
5 First Amendment rights, and (5) the action did not reasonably advance  
6 a legitimate correctional goal." See Brodheim v. Cry, 584 F.3d 1262,  
7 1269 (9<sup>th</sup> Cir. 2009)(quoting Rhodes v. Robinson, 408 F.3d 559, 567-68  
8 (9<sup>th</sup> Cir. 2005)). To satisfy the causation element, Plaintiff must  
9 show that his constitutionally protected conduct was a "substantial or  
10 motivating factor" for the alleged retaliatory action. See Mt.  
11 Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287, 97  
12 S.Ct. 568 (1977). Further, Plaintiff must show that the alleged  
13 retaliatory actions of Defendants caused Plaintiff some injury (see  
14 Resnick v. Hayes, 213 F.3d 443, 449 (9<sup>th</sup> Cir. 2000)(as amended));  
15 Rhodes, 408 F.3d at 569. Finally, the plaintiff bears the burden of  
16 pleading or proving the absence of legitimate correctional goals for  
17 the conduct of which he complains. See Pratt, 65 F.3d at 806.

18 As shown above, Plaintiff has no substantive right in a grievance  
19 procedure. Moreover, Plaintiff cannot create a federal right where  
20 none exists by adding the name "retaliation" to the claim.

21 It is now established beyond doubt that prisoners have a  
22 constitutional right of access to the courts. Bounds v. Smith, 430  
23 U.S. 817, 821, 97 S.Ct. 1491 (1977). Claims for denial of access to  
24 the courts may arise either from the frustration or hindrance of "a  
25 litigating opportunity yet to be gained" (forward-looking access  
26 claim) or from the loss of a meritorious suit that cannot now be tried  
27 (backward-looking claim). See Christopher v. Harbury, 536 U.S. 403,  
28 412-15, 122 S.Ct. 2179 (2002). However, in order for Plaintiff to



1 establish any denial of access claim, Plaintiff must show that he  
2 suffered an "actual injury" as a result of the Defendants' actions.  
3 see Harbury, 536 U.S. at 415. "In order to establish actual injury,  
4 the inmate must demonstrate that official acts or omissions "hindered  
5 his efforts to pursue [non-frivolous] legal claim." Phillips v.,  
6 Hust, 477 F.3d 1070, 1076 (9<sup>th</sup> Cir. 2007)(quoting Lewis v. Casey, 518  
7 U.S. 343, 351, 115 S.Ct. 2174 (1996). Moreover, the right of access  
8 is limited only to cases involving a direct or collateral challenge to  
9 the conviction or sentence for which a plaintiff is incarcerated, or  
10 a civil rights action commenced pursuant to 42 U.S.C. §1983 to  
11 vindicate "basic constitutional rights." See Lewis, 518 U.S. at 354.  
12 Here, Plaintiff has failed to state an "actual injury."

13  
14 **CONCLUSION AND ORDER**

15 In an abundance of caution, Plaintiff will be afforded an  
16 opportunity to amend his Complaint to attempt to overcome the defects  
17 discussed above, and to allege a cognizable constitutional claim  
18 Accordingly, **IT IS HEREBY ORDERED:** (1) Plaintiff's Complaint is  
19 dismissed with leave to amend; and (2) Plaintiff is granted 30 days  
20 from the date of this memorandum and order within which to file a  
21 "First Amended Complaint." The First Amended Complaint must be  
22 complete within itself and shall not incorporate by reference and

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