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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

JACKIE ROBINSON,

Plaintiff,

vs.

MIRIAM JOYA, MARIA ZAVALA, Hospital
Police Officer DUVALL, Hospital Police
Officer Ofelia Corona, COALINGA STATE
HOSPITAL, CALIFORNIA DEPARTMENT
OF MENTAL HEALTH,

Defendants.

Civil No. 1:08-1339-JLS (BLM)

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS PLAINTIFF’S
SECOND AMENDED COMPLAINT
PURSUANT TO FED.R.CIV.P. 12(b)(6),
GRANTING DEFENDANTS’
SUPPLEMENTAL MOTION TO
DISMISS SECOND AMENDED
COMPLAINT, AND DENYING AS
MOOT PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING ORDER**

[Doc. Nos. 18, 23, & 27]

I. PROCEDURAL BACKGROUND

On September 8, 2008, Plaintiff Jackie Robinson, a Sexually Violent Predator (“SVP”) and civil detainee currently housed at Coalinga State Hospital (“CSH”) and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C. section 1983 [doc. no. 1]. Plaintiff did not prepay the \$350 filing fee mandated by 28 U.S.C. section 1914(a) to commence a civil action; instead, he filed

1 a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. section 1915(a) [doc. no. 2].
2 The Court granted Plaintiff’s Motion to Proceed IFP on September 12, 2008 [doc. no. 4]. On
3 November 3, 2008, Plaintiff filed a First Amended Complaint (“FAC”) [doc. no. 6]. On November
4 26, 2008, this matter was reassigned to Visiting District Judge Janis L. Sammartino for all further
5 proceedings [doc. no. 7].

6 On January 26, 2009, the Court issued a *sua sponte* order dismissing the First Amended
7 Complaint without prejudice pursuant to 28 U.S.C. section 1915(e)(2)(b) because it appeared from
8 the face of Plaintiff’s pleading that it failed to state a claim upon which relief may be granted. (*See*
9 doc. no. 9 at 4.) However, Plaintiff was granted leave to file a Second Amended Complaint to
10 address the deficiencies of the pleading as noted in the dismissal order. (*Id.* at 4-5.)

11 On March 5, 2009, Plaintiff filed a Second Amended Complaint [doc. no. 10]. On July 6,
12 2009, Defendants Miriam Joya, Maria Zavala, Jerry Duvall, Ofelia Corona, CSH, and California
13 Department of Mental Health (“DMH”) filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6)
14 [doc. no. 18] and, on August 24, 2009, those same Defendants filed a Supplemental Motion to
15 Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) [doc. no. 27]. On September 17, 2009, Plaintiff filed both
16 an Objection to Defendants’ Motion to Dismiss the Second Amended Complaint and an Objection to
17 Defendants’ Supplemental Motion to Dismiss the Second Amended Complaint [doc. nos. 30 & 31].
18 These motions are the subject of this Order. Pursuant to the Court’s Order Setting Briefing
19 Schedule, filed on July 10, 2009 [doc. no. 21], the Court now considers the matter fully briefed and
20 hereby issues its ruling with regard to the motions without hearing or oral argument.¹

21 **II. ALLEGATIONS OF THE SECOND AMENDED COMPLAINT**

22 Plaintiff Jackie Robinson has been committed to CSH as an SVP pursuant to California’s
23 Sexually Violent Predator Act, or Jessica’s Law, since January 2007. (SAC at 4.) On or about May
24 22, 2007, Defendant Duvall seized Plaintiff’s incoming mail, “read it cover to cover,” and,

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27 ¹Additionally, on July 30, 2009, Plaintiff filed a Motion for Preliminary Injunction and
28 Temporary Restraining Order along with points and authorities and his declaration supporting the
motion [doc. nos. 23-25]. On August 21, 2009, Defendants Joya, Zavala, Duvall, Corona, CSH, and the
DMH filed an Opposition to Plaintiff’s motion and, on September 4, 2009, Plaintiff filed a response
[doc. nos. 26 & 28].

1 determining that the mail was Plaintiff's bank statement, attempted to make Plaintiff turn it over to
2 the Trust Office. Plaintiff objected. (*Id.*)

3 On or about March 17, 2008, Plaintiff received several pieces of mail, including a Pell Grant
4 check. (*Id.*) When Defendant Zavala, a hospital police officer, inspected Plaintiff's mail and
5 noticed the check, Plaintiff informed Zavala that he wished to send the check home and that he had
6 the envelope and stamp with which to do so. (SAC at 4-5.) Plaintiff further informed Zavala that
7 CSH did not have conservatorship over him and that Plaintiff did not wish to send the check to the
8 Trust Office. (SAC at 5.) Zavala permitted Plaintiff to place the check in the envelope, and she
9 deposited it for him in the outgoing mail receptacle. (*Id.*) However, an hour later, Plaintiff was
10 contacted by Defendant Joya, Acting Unit Supervisor for Plaintiff's unit, who stated "Per Coalinga's
11 mail policy Plaintiff had to open his sealed letter and remove the check, and that he had to endorse it
12 and send it to the Trust Office." (*Id.*) Plaintiff further alleges that according to CHS mail policy,
13 Defendant CSH failed to maintain, store, or keep outgoing mail in a locked box or other secured
14 repository, leaving it accessible to anyone and allowing Joy's interference with his mail. Plaintiff
15 goes on to allege Defendant Joya held his mail in her office "form over a week." (*Id.*)² Plaintiff
16 further alleges that on February 24, 2009, Defendant Ofelia Corona, a Unit Supervisor for Plaintiff's
17 housing unit, seized and tampered with Plaintiff's mail from a financial institution, without first
18 allowing Plaintiff to open it. (*Id.*)³ Plaintiff has no idea what became of this mail from his financial
19 institution.

20 In or about March 2007, a computer moratorium was enacted by Defendant CHS. (SAC at
21 8.) The moratorium put a halt to application of the computer policy contained in Administrative
22 Directive 654, which allowed civil detainees at CSH to own and possess their own personal laptop
23 computers. (*Id.*) Subsequently, after a review of the moratorium and on or about February 2008,
24 Acting Executive Director Norm Kramer determined that "there would be no changes to the current
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27 ²On September 8, 2008, the California Office of Administrative Law ("COAL") determined that
28 Defendant CSH's Administrative Directive 624, the "mail policy," was an "underground regulation."
(SAC at 6; *see also* Plaintiff's Ex. 1.) This means, according to COAL, AD 624 was invalid because
it failed to comply with California's Administrative Procedure Act.

³Plaintiff further alleges that Defendant Corona seized, tampered with, and perhaps destroyed
mail from financial institutions that was addressed to other residents of CHS. (SAC at 6-7.)

1 computer policy.” (*Id.*) On October 8, 2008, after Kramer retired, Plaintiff appealed the computer
2 moratorium to the new Acting Executive Director, Pam Ahlin. Ahlin responded to Plaintiff’s appeal
3 stating “The Department of Mental Health [“DMH”] has recently established a statewide workgroup
4 to develop an appropriate policy for application in all DMH facilities concerning the use of personal
5 computers.” (*Id.*) Since the moratorium has been in effect (since in or about March 2007), up to
6 700 of 900 residents of CSH, including Plaintiff, would like to own a laptop computer but are
7 precluded from doing so by the moratorium. (SAC at 8-9.)

8 Plaintiff contends that because of his commitment as an SVP, he is entitled to “more
9 considerate treatment” than those who are criminally detained. (SAC at 3.) In Count 1, Plaintiff
10 claims that Defendant Duvall violated his First Amendment right to privacy and his Fourth
11 Amendment right to be free from unreasonable searches and seizures when he attempted to force
12 Plaintiff to turn over his bank statement to the Trust Office. (SAC at 4.) Also as part of Count 1,
13 Plaintiff claims that Defendants Zavala and Joya violated his First Amendment right to privacy and
14 his Fourth Amendment right to be free from unreasonable searches and seizures when they acted in
15 concert to intentionally and illegally seize, obstruct, delay, and tamper with Plaintiff’s mail. (SAC at
16 5.) In addition, Plaintiff alleges that Defendant Joya violated 18 U.S.C. sections 1702 and 1708 by
17 depriving him of the right to correspond freely with individuals of his choosing and confiscating and
18 holding his mail in her office for more than one week. (SAC at 5.)

19 In Count 2, Plaintiff contends that Defendant CSH knowingly and willfully violated
20 Plaintiff’s First and Fourth Amendment rights by creating, enforcing, interpreting,
21 and fostering an illegal mail policy (Administrative Directive 624) that punishes Plaintiff for
22 receiving mail. (SAC at 6-7.) Additionally, Defendant CSH failed to properly train and instruct its
23 employees, agents, or staff on proper procedures for handling incoming/outgoing U.S. mail. (*Id.*)
24 Also as part of Count 2, Plaintiff claims that Defendant Corona violated his Fourth Amendment right
25 to be free from unreasonable searches and seizures when she maliciously acted to seize, tamper with,
26 and possibly destroy Plaintiff’s mail on February 24, 2009. (SAC at 7.)

27 In Count 3, Plaintiff contends that Defendant DMH has violated and continues to violate
28 Plaintiff’s, and other residents’, Fourteenth Amendment rights to Equal Protection and Due Process
with regard to the prolonged moratorium on Administrative Directive 654, which allows civil

1 detainees at CSH to own and possess personal laptop computers. (SAC 8-9.) Plaintiff further claims
2 that Defendant DMH has acted with deliberate indifference in failing to create, enact, or restore a
3 meaningful policy regarding the possession or use of personal laptop computers by residents of
4 CSH. (*Id.*)

5 **III. STANDARD UNDER FED. R. CIV. P. 12(b)(6)**

6 A motion to dismiss for failure to state a claim under Rule 12(b)(6), Federal Rules of Civil
7 Procedure, “tests the legal sufficiency of a claim,” focusing on the “sufficiency” of a claim statement
8 rather than on the claim’s substantive merits. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).
9 Therefore, courts normally “look only at the face of the complaint to decide” the motion. *Van*
10 *Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002). A Rule 12(b)(6) dismissal
11 may be based on either a “lack of a cognizable legal theory” or “the absence of sufficient facts
12 alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
13 Cir. 1990).

14 “While legal conclusions can provide the framework of a complaint, they must be supported
15 by factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. ___, 129 S.Ct. 1937, 1950 (2009). In reviewing a
16 complaint for Rule 12(b)(6) dismissal purposes, courts accept allegations of material fact as true and
17 construe them in the light most favorable to the nonmoving party. *Cahill v. Liberty Mutual Ins. Co.*,
18 80 F.3d 336, 337-38 (9th Cir. 1996). Factual allegations asserted by *pro se* petitioners, “however
19 inartfully pleaded,” are held “to less stringent standards” than formal pleadings drafted by lawyers.
20 *Haines v. Kerner*, 404 U.S. 519-20 (1972); *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d
21 621, 623 (9th Cir. 1988) (“In civil rights cases where a plaintiff appears *pro se*, the court must
22 construe the pleadings liberally and must afford plaintiff the benefit of any doubt”). Nevertheless,
23 while “the pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ . . . it
24 demands more than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129
25 S.Ct. at 1949, quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (in deciding a
26 motion to dismiss, the court is “not bound to accept as true a legal conclusion couched as a factual
27 allegation”); see *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.) (the court need not

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1 accept as true conclusory allegations, “unwarranted deductions,” or “unreasonable inferences”),
2 *amended on other grounds*, 275 F.3d 1187 (9th Cir. 2001).

3 Thus, “[w]hen there are well-pleaded factual allegations, a court should assume their veracity
4 and then decide whether they plausibly give rise to an entitlement to relief.” *Iqbal*, 129 S.Ct. at
5 1250. A Rule 12(b)(6) dismissal is properly granted if a plaintiff’s complaint does not contain
6 “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A
7 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
8 the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S.Ct. at
9 1949 (2009), *citing Twombly*, 550 U.S. at 570. “The plausibility standard is not akin to a
10 ‘probability requirement,’ but it asks for more than a sheer possibility that defendant has acted
11 unlawfully.” *Id.* Pleading facts that are “merely consistent with” a defendant’s liability “stops short
12 of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.*, *quoting Twombly*, 550
13 U.S. at 557. When a plaintiff has not “nudged [his] claims across the line from conceivable to
14 plausible, [his] complaint must be dismissed.” *Twombly*, 550 U.S. at 570. “Threadbare recitals of
15 the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*,
16 129 S.Ct. at 1949 (“A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the
17 elements of a cause of action will not do’”) *quoting Twombly*, 550 U.S. at 555, 557 (a complaint is
18 insufficient if it tenders “naked assertions” devoid of “further factual enhancement”).

19 The Court may not itself supply missing elements in a deficient claim statement. In spite of
20 the deference courts accord to a plaintiff’s factual allegations, it is improper for the court to assume
21 that “the [plaintiff] can prove facts which [he or she] has not alleged.” *Associated General*
22 *Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 526 (1983).
23 Nor must the court “accept as true allegations that contradict matters properly subject to judicial
24 notice or by exhibit.” *Sprewell*, 266 F.3d at 988 (citation omitted); *see also Iletto v. Glock Inc.*, 349
25 F.3d 1191, 1200 (9th Cir. 2003) (court need not accept as true unreasonable inferences or
26 conclusions of law cast in the form of factual allegations). “In sum, for a complaint to survive a
27 motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences [drawn] from that

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1 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. United*
2 *States Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009), *quoting Iqbal*, 129 S. Ct. at 1949.

3 **IV. DEFENDANTS’ ARGUMENTS IN SUPPORT OF DISMISSAL**

4 Defendants Miriam Joya, Maria Zavala, Jerry Duvall, Ofelia Corona, CSH, and DMH move
5 to dismiss Plaintiff’s Second Amended Complaint on the following grounds:

6 1) With regard to the Pell Grant check incident on March 17, 2008, Plaintiff fails to state a
7 claim for violation of his First Amendment right to be free from interference with his mail, fails to
8 state a claim for violation of his Fourth Amendment right to be free from unreasonable searches and
9 seizures, and fails to state a claim for violation of his Fourteenth Amendment right to due process
10 because he fails to allege any injury (Defendants’ Motion to Dismiss Plaintiff’s Second Amended
11 Complaint [Doc. No. 18], hereafter the “Motion,” at 9-14);

12 2) With regard to the incident involving inspection of his bank statement on May 22, 2007,
13 Plaintiff fails to state a claim for violation of his First Amendment right to be free from interference
14 with his mail; fails to state a claim for violation of his Fourth Amendment right to be free from
15 unreasonable searches and seizures because he had no legitimate expectation of privacy in his bank
16 statement, because he has alleged no “seizure,” and because reviewing Plaintiff’s bank statement
17 promoted a legitimate governmental interest; and he fails to state a claim for violation of his
18 Fourteenth Amendment rights to due process because any liberty interest in uncensored
19 communication by letter is qualified by Plaintiff’s status as a civil detainee (Defendants’
20 Supplemental Motion to Dismiss his Second Amended Complaint [doc. no. 27], hereafter the
21 “Supplemental Motion,” at 7-13);

22 3) With regard to the February 24, 2009 incident involving confiscation of mail from
23 Plaintiff’s financial institution before Plaintiff had read it, Plaintiff fails to state a claim for violation
24 of his Fourth Amendment right to be free from unreasonable searches and seizures because, among
25 other reasons, Plaintiff does not allege that Defendant Corona read the documents or disclosed their
26 contents to others so as to implicate his right to privacy, and he fails to state a claim for violation of
27 his Fourteenth Amendment right to due process because the California Government Tort Claims Act

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1 provides an adequate post-deprivation remedy for unauthorized property deprivations so as to
2 disallow a remedy under 42 U.S.C. section 1983 (Supplemental Motion at 14-17);

3 4) Plaintiff fails to state a claim for conspiracy to violate 18 U.S.C. sections 1702 and 1708
4 because there is no private right of action under these penal statutes governing criminal offenses for
5 obstruction and theft of mail (Motion at 14-15);

6 5) Plaintiff fails to state a claim for violation of his right to equal protection under the law
7 with regard to the computer moratorium because he fails to allege that he is a member of an
8 identifiable class, that he was intentionally treated differently from others similarly situated, and that
9 there was no rational basis for the difference in treatment (Supplemental Motion at 17-18);

10 6) Plaintiff fails to state a claim for violation of his right to due process with regard to the
11 computer moratorium because he fails to allege a constitutionally-protected right to possess a
12 personal computer (Supplemental Motion at 18);

13 7) Defendants CSH and the DMH should be dismissed because they are not “persons” under
14 42 U.S.C. section 1983, and the Eleventh Amendment bars suit for damages or injunctive relief
15 against the State and its agencies (Motion at 15-16);

16 8) Plaintiff’s third claim (involving the computer moratorium) should be dismissed in its
17 entirety because no individuals are named in that claim, and the Eleventh Amendment bars claims
18 against the State or its agencies for injunctive relief or damages (Supplemental Motion at 19);

19 9) The damage claims against Defendants Zavala and Duvall in their official capacities
20 should be dismissed because the Eleventh Amendment bars damages actions under 42 U.S.C.
21 section 1983 against state officials in their official capacities (Motion at 16);

22 10) Plaintiff’s claims for damages against the Defendants in their individual capacity are
23 barred by the doctrine of qualified immunity (Motion at 17-21; Supplemental Motion at 20-21);

24 11) Defendant Zavala should be dismissed because Plaintiff fails to allege wrongful conduct
25 on her part and because Plaintiff fails to properly allege a conspiracy claim against her (Motion at
26 22-23);

27 12) Plaintiff’s allegations on behalf of third parties should be dismissed (Motion at 23);

28 13) Plaintiff’s allegations of “failure to train” fail to state a claim for relief (Motion at 24);

1 14) The Court should decline to exercise supplemental jurisdiction over Plaintiff’s state law
2 underground regulation claim and, in any event, Plaintiff fails to properly state any such claim
3 (Supplemental Motion at 19-20); and

4 14) The SAC contains allegations that are vague and conclusory, and they should be
5 dismissed or stricken (Motion at 24-28).

6 **V. DISCUSSION**

7 **A. Plaintiff’s Sexually Violent Predator Status**

8 Because Plaintiff was civilly committed at CSH as an SVP at the time of the alleged civil
9 rights violations, he is “entitled to conditions of confinement that are not punitive.” *Jones v. Blanas*,
10 393 F.3d 918, 933 (9th Cir. 2004); *see also Youngberg v. Romeo*, 457 U.S. 307, 321-22
11 (1982)(“[P]ersons who have been involuntarily committed are entitled to more considerate treatment
12 and conditions of confinement than criminals whose conditions of confinement are designed to
13 punish”); *see Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (pretrial detainees retain greater liberty
14 protections than individuals detained under criminal process).

15 . . . [C]ivilly detained persons must be afforded “more considerate treatment and
16 conditions of confinement than criminals whose conditions of confinement are
17 designed to punish.” [citations omitted] It follows logically, then, that the rights
18 afforded prisoners set a floor for those that must be afforded SVPs, and that where the
19 Defendants violate a standard that is clearly established in the prison context, the
20 violation is clearly established under the SVP scheme, except where the California
21 SVP statutory scheme would give a reasonable official reason to believe that the body
22 of law applicable to prisoners would not apply.

23 *Hydrick v. Hunter*, 500 F.3d 978, 989 (9th Cir. 2007). Importantly, the *Hydrick* court acknowledged
24 “. . . it is not always clearly established *how much* more expansive the rights of civilly detained
25 persons are than those of criminally detained persons.” 500 F.3d at 990.

26 In *Jones*, the Ninth Circuit stated:

27 [¶] At a bare minimum, then, an individual detained under civil process – like an
28 individual accused but not convicted of a crime – cannot be subjected to conditions
that “amount to punishment.” *Bell*, 441 U.S. at 536, 99 S.Ct. 1861. Following *Bell*,
we have recognized that punitive conditions may be shown (1) where the challenged
restrictions are expressly intended to punish, or (2) where the challenged restrictions
serve an alternative, non-punitive purpose but are nonetheless “excessive in relation
to the alternative purpose,” *Demery [v. Arpaio]*, 378 F.3d at 1028 (quoting *Bell*, 441
U.S. at 538, 99 S.Ct. 1861) . . . or “are employed to achieve objectives that could be
accomplished in so many alternative and less harsh methods,” *Hallstrom v. City of
Garden City*, 991 F.2d 1473, 1484 (9th Cir. 1993) (quoting *Bell*, 441 U.S. at 539
n.20,

1 99 S.Ct. 1861) . . . Legitimate, non-punitive government interests include ensuring
2 a detainee’s presence at trial, maintaining jail security, and effective management of a
detention facility. *Id.*

3 *Jones v. Blanas*, 393 F.3d at 932.

4 **B. First Amendment and Interference With Mail**

5 As part of his first and second claims for relief, Plaintiff contends that his First Amendment
6 right to be free from interference with mail was violated on three occasions: the March 17, 2008
7 incident (involving the Pell Grant check), the May 22, 2007 incident (involving inspection of his
8 bank statement), and the February 24, 2009 incident (involving confiscation of mail from Plaintiff’s
9 financial institution before Plaintiff had read it). (SAC at 4-7.) Defendants contend that Plaintiff has
10 failed to state a claim for violation of the First Amendment with respect to receipt of mail. (Motion
11 at 9-14.)

12 Prisoners and civilly committed persons have a First Amendment right to send and receive
13 mail. *Thornburgh v. Abbott*, 490 U.S. 401 407 (1989). Restrictions on incoming mail are analyzed
14 under the reasonableness standard set forth in *Turner v. Safley*, 482 U.S. 78, 89-91 (1987). *See also*,
15 *Thornburgh*, 490 U.S. at 413-14. Pursuant to *Safley*, an “interference” is valid if it reasonably
16 related to legitimate penological interests. 482 U.S. at 89. To determine the reasonableness of the
17 regulation, the court must consider the following: (1) whether there is a “valid, rational connection
18 between the regulation and the legitimate government interest put forward to justify it,” (2) “whether
19 there are alternative means of exercising the right,” (3) the impact that the “accommodation of the
20 asserted constitutional right will have on guards and other inmates,” and (4) the absence of ready
21 alternatives.” *Safley*, 482 U.S. at 89-90.

22 The Ninth Circuit has held that prison officials may examine a *prisoner’s* communications
23 without infringing upon his rights. *U.S. v. Wilson*, 447 F.2d 1, 8 n.4 (9th Cir. 1971). Courts have
24 also upheld policies that call for inspection of non-legal mail for contraband. *Smith v. Boyd*, 945
25 F.2d 1041, 1043 (8th Cir. 1991); *Witherow v. Paff*, 52 F.3d 264 (9th Cir. 1995); *Gaines v. Lane*, 790
26 F.2d 1299, 1304 (7th Cir. 1986). With regard to Plaintiff’s status as a civil detainee, any restrictions
27 on his First Amendment rights to send and receive mail must be non-punitive. *Hydrick*, 500 F.3d at
28 989; *Jones*, 393 F.3d at 932. In order to allege that punitive restrictions exist, a plaintiff must assert

1 that the challenged restrictions are expressly intended to punish, the restrictions serve a non-punitive
2 purpose but are nonetheless excessive, or that the legitimate purpose could be accomplished with
3 less restrictive or harsh methods. *Jones*, 393 F.3d at 932; *Bell*, 441 U.S. at 539.

4 **I. The March 17, 2008 incident**

5 With regard to the March 17, 2008 incident (involving the Pell Grant check), even assuming
6 Plaintiff intended to allege that Defendant Joya improperly held his Pell Grant check for one week, it
7 has been held that a temporary delay does not violate an inmate's First Amendment rights. *Crofton*
8 *v. Roe*, 170 F.3d 957, 961 (9th Cir. 1999)(temporary delay in the delivery of an inmate's
9 publications, resulting from the prison official's security inspection, does not violate First
10 Amendment rights); *Sizemore v. Williford*, 829 F.2d 608, 610 (7th Cir. 1987)("merely alleging an
11 isolated delay or some other relatively short-term, no content-based disruption in the delivery of
12 inmate reading materials will not support, even as against a motion to dismiss, a cause of action
13 grounded upon the First Amendment"). Other courts have also held that an isolated incident in
14 disruption of an inmate's mail is not usually sufficient to show a constitutional violation. *Davis v.*
15 *Goord*, 320 F.3d 346, 351 (2d. Cir. 2003); *Gardner v. Howard*, 109 F.3d 427, 431 (8th Cir. 1997);
16 *Smith v. Maschner*, 899 F.2d 944 (10th Cir. 1990). Even if Plaintiff's allegation that a one-week
17 delay in receiving the check raised a cognizable First Amendment claim, Plaintiff does not allege
18 that Joya's temporary confiscation of the Pell Grant check was punitive. Thus, he does not allege a
19 constitutional violation. *See Hydrick*, 500 F.3d at 989; *Jones*, 393 F.3d at 932. Because Plaintiff
20 alleges, at most, a one-week delay in the return of his Pell Grant check, he has failed to state a claim
21 for violation of the First Amendment. Fed.R.Civ.P. 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*,
22 550 U.S. at 555-57, 570; *Moss*, 572 F.3d at 969.

23 **ii. The May 22, 2007 incident**

24 Regarding the May 22, 2007 incident (involving inspection of his bank statement), what
25 Plaintiff alleges amounts to a routine inspection for contraband, conducted in his presence. Plaintiff
26 alleges no any type of censorship in conjunction with the inspection. "A prisoner's freedom from
27 censorship under the First Amendment . . . with regard to his incoming mail is not the equivalent of
28 freedom from inspection or perusal." *Brewer v. Wilkinson*, 3 F.3d 821 (5th Cir. 1993); *Wolff v.*

1 *McDonnell*, 418 U.S. 539, 576-77 (1974). While Plaintiff alleges Defendant Duvall “attempted” to
2 make Plaintiff turn the bank statement over to the Trust Office (SAC at 4), he alleges no wrongful
3 conduct which would, if true, result in a violation of the First Amendment. Specifically with regard
4 to his status as a civil detainee, Plaintiff does not allege that the inspection of the bank statement was
5 punitive (*see Hydrick*, 500 F.3d at 989; *Jones*, 393 F.3d at 932). Accordingly, he fails to state a
6 claim for violation of the First Amendment. Fed.R.Civ.P. 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50;
7 *Twombly*, 550 U.S. at 555-57, 570; *Moss*, 572 F.3d at 969.

8 **iii. The February 24, 2009 incident**

9 Regarding the February 24, 2009 incident (involving confiscation of mail from Plaintiff’s
10 financial institution before Plaintiff had read it), Plaintiff again fails to state a claim for violation of
11 his First Amendment right to receive mail. Plaintiff’s allegations that Defendant Corona “refused to
12 allow him to open inspect or read his mail,” are insufficient to allege an unreasonable and punitive
13 interference with his mail under *Safley*, 482 U.S. at 89-90. In light of Plaintiff’s status as a civil
14 detainee, his failure to allege that Corona’s actions were punitive (*see Hydrick*, 500 F.3d at 989;
15 *Jones*, 393 F.3d at 932) results in a failure to state a claim under the First Amendment. Fed.R.Civ.P.
16 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at 555-57, 570; *Moss*, 572 F.3d at 969.

17 **iv. Qualified Immunity**

18 Even if Plaintiff had alleged conduct that violated a constitutional right regarding any of the
19 above-referenced events, the right asserted was not “clearly established” at the time of the alleged
20 misconduct so as to provide the defendant with proper notice. *See Saucier v. Katz*, 533 U.S. 194,
21 201 (2001). *Hydrick* and *Jones* are new cases, and neither address an SVP’s claims or rights
22 regarding inspection of legal mail as “punitive.” Accordingly, even if Plaintiff’s allegations stated a
23 claim (which they do not), Defendants would be entitled to a finding of qualified immunity on the
24 claims.

25 **C. Fourth Amendment and Search and Seizure of Mail**

26 As part of his first and second claims for relief, Plaintiff contends that his Fourth
27 Amendment right to be free from unreasonable searches and seizures was violated on three
28 occasions: the May 22, 2007 incident (involving inspection of his bank statement), the March 17,
2008 incident

1
2 (involving the Pell Grant check), and the February 24, 2009 incident (involving confiscation of mail
3 from Plaintiff's financial institution before Plaintiff had read it). (SAC at 4-7.)

4 In *Hydrick v. Hunter*, the Ninth Circuit specifically held that the Fourth Amendment's
5 proscription against unreasonable searches and seizures "certainly extends to SVPs." 500 F.3d at
6 993. However, the Court further noted that "SVPs have been civilly committed subsequent to
7 criminal convictions and have been adjudged to pose a danger to the health and safety of others."
8 500 F.3d at 990. Thus, because "the rights afforded civilly detained persons are flexible enough to
9 take into account the circumstances of detention," 500 F.3d at 990, SVPs nevertheless remain
10 subject to
11 "[l]egitimate, non-punitive government interests" such as "maintaining jail security, and effective
12 management of [the] detention facility." *Jones v. Blanas*, 393 F.3d at 932. And because they are
13 held in a jail-like setting, "the reasonableness of a particular search ... is determined by reference to
14 ... concerns that mirror those that arise in the prison context: e.g., the safety and security of guards
15 and others in the facility, order within the facility and the efficiency of the facility's operations."
16 *Hydrick*, 500 F.3d at 993 (internal quotation omitted).

17 In *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Supreme Court addressed the extent
18 to which prison officials can open and inspect incoming attorney-inmate mail (presumably, the
19 category of mail afforded the highest level of privacy). The Court, recognizing the state's interest in
20 checking incoming legal mail for contraband, upheld a prison regulation allowing officials to open,
21 but not read or censor, legal mail in the prisoner's presence. *Id.* at 576-77; *see also Reneer v. Sewell*,
22 975 F.2d 258 (6th Cir. 1992); *Bert v. Carlson*, 752 F. Supp. 346, 348 (C.D. Cal. 1990). In so doing,
23 the Court stated that the challenged regulation permitting prisoners to be present when the legal mail
24 was inspected was "all and perhaps even more" than the constitution required. *Wolff*, 418 U.S. at
25 577. With regard to Plaintiff's SVP civil detainee status, the Ninth Circuit has noted that a condition
26 is "'punitive' where it is intended to punish, or where it is 'excessive in relation to [its non-punitive]
27 purpose,' or is 'employed to achieve objectives that could be accomplished in so many alternative
28 and less harsh methods.'" *Jones*, 393 F.3d at 933-34 (citations omitted).

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I. The May 22, 2007 incident

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Defendants contend that Plaintiff fails to state a claim for violation of his Fourth Amendment right to be free from unreasonable searches and seizures with regard to the May 22, 2007 incident (involving inspection of his bank statement) because he had no legitimate expectation of privacy in his bank statement, because he has alleged no “seizure,” and because reviewing Plaintiff’s bank statement promoted a legitimate governmental interest. (Supplemental Motion at 7-11.) Defendants are correct. Plaintiff alleges that Defendant Duvall “seized plaintiff’s incoming mail [and] read it cover to cover” (SAC at 4.) After determining the mail was a bank statement, “Defendant Duvall attempted to make plaintiff turn it over to the Trust Office to which plaintiff objected.” (SAC at 4.) Even if Plaintiff’s allegation that Duvall’s inspection of his mail raised a cognizable Fourth Amendment claim, Plaintiff does not allege that any such inspection was “arbitrary, retaliatory, or clearly exceed[ed] the legitimate purpose of detention.” *Hydrick*, 500 F.3d at 993. Thus, Plaintiff has failed to allege a Fourth Amendment claim pertaining to the May 22, 2007 incident. Fed.R.Civ.P. 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at 555-57, 570; *Moss*, 572 F.3d at 969.

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ii. The March 17, 2008 incident

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Defendants contend that Plaintiff fails to state a claim for violation of his Fourth Amendment right to be free from unreasonable searches and seizures with regard to the March 17, 2008 incident (involving the Pell Grant check) because he fails to allege what happened to the Pell Grant check after it was held in the Joya’s office “for over a week.” (Supplemental Motion at 13-14.) Defendants are correct. Even if Plaintiff’s allegation that Joya’s seizure of the check raised a cognizable Fourth Amendment claim, Plaintiff has failed to allege the seizure was unreasonable, arbitrary, or retaliatory so as to be punitive under *Hydrick*, 500 F.3d at 993. Instead, Plaintiff alleges the seizure was pursuant to CSH mail policy trust account procedures. Thus, Plaintiff has failed to allege a Fourth Amendment claim pertaining to the March 17, 2008 incident. Fed.R.Civ.P. 12(b)(6);

1 *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at 555-57, 570; *Moss*, 572 F.3d at 969.

2 **iii. The February 29, 2009 incident**

3 Defendants contend that Plaintiff fails to state a claim for violation of his Fourth Amendment
4
5 right to be free from unreasonable searches and seizures with regard to the February 29, 2009
6 incident (involving confiscation of mail from Plaintiff’s financial institution before Plaintiff had read
7 it). (Supplemental Motion at 14-15.) Again, Defendants are correct. Even if Plaintiff’s allegation
8 that Defendant Corona’s seizure of his mail raised a cognizable Fourth Amendment claim, Plaintiff
9 does not allege that any such seizure was “arbitrary, retaliatory, or clearly exceed[ed] the legitimate
10 purpose of detention” so as to be punitive. *Hydrick*, 500 F.3d at 993. Thus, Plaintiff has failed to
11 allege a Fourth Amendment claim pertaining to the February 29, 2009 incident. Fed.R.Civ.P.
12 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at 555-57, 570; *Moss*, 572 F.3d at 969.

13 **iv. Qualified Immunity**

14 Even if Plaintiff had alleged conduct that violated a constitutional right regarding any of the
15 above-referenced events, the rights asserted were not “clearly established” at the time of the alleged
16 misconduct so as to provide the defendant with proper notice. *See Saucier v. Katz*, 533 U.S. 194,
17 201 (2001). *Hydrick* and *Jones* are new cases, and neither addresses an SVP’s claims or rights
18 regarding inspection of legal mail as “punitive.” Accordingly, even if Plaintiff’s allegations stated a
19 claim (which they do not), Defendants would be entitled to a finding of qualified immunity on the
20 claims.

21 **D. Due Process and Interference with Mail**

22 The Due Process Clause of the Fourteenth Amendment protects persons from the deprivation
23 of their life, liberty and property without due process of law, and has both procedural and
24 substantive
25 components. *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). Plaintiff is unable to
26 demonstrate a due process violation unless he can identify “a liberty or property interest protected by
27 the constitution” of which he was deprived. *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir. 2000).

28 Defendants contend that Plaintiff fails to state a claim for violation of his substantive
Fourteenth Amendment rights with regard to the May 22, 2007 incident (involving inspection of his

1 bank statement) because the incident did not involve a fundamental right and because any liberty
2 interest in uncensored communication by letter is qualified by Plaintiff's status as a civil detainee.
3 (Supplemental Motion at 11-13.) Defendants are correct. Plaintiff is unable to demonstrate either a
4 liberty or property interest in uncensored communication by letter arising directly under the
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6 Fourteenth Amendment. *Wright*, 219 F.3d at 913. Thus, Plaintiff has failed to allege a Fourteenth
7 Amendment substantive due process claim pertaining to the May 22, 2007 incident. Fed.R.Civ.P.
8 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at 555-57, 570; *Moss*, 572 F.3d at 969.

9 Next, Defendants contend that Plaintiff fails to state a claim for violation of his Fourteenth
10 Amendment right to procedural due process with regard to the February 24, 2009 incident (involving
11 confiscation of mail from Plaintiff's financial institution before Plaintiff had read it) because the
12 California Government Tort Claims Act ("CTCA") provides an adequate post-deprivation remedy
13 for unauthorized property deprivations so as to disallow a remedy under 42 U.S.C. section 1983.
14 (Supplemental Motion at 15-17.) Again, Defendants are correct. To the extent that Plaintiff is
15 attempting to bring a Fourteenth Amendment due process claim relating to the unauthorized
16 deprivation of his property, such a claim will not state a federal cause of action under section 1983 if
17 the plaintiff has an adequate post-deprivation state remedy. *See Hudson v. Palmer*, 468 U.S. 517,
18 533 (1984). The CTCA provides an adequate post-deprivation state remedy for the random and
19 unauthorized taking of property. *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Here,
20 Plaintiff fails to allege compliance with the claim presentation requirements of the CTCA. *See*
21 *Karim-Panahi*, 839 F.2d at 627. Thus, Plaintiff has failed to allege a Fourteenth Amendment
22 procedural due process claim pertaining to the February 29, 2009 incident. Fed.R.Civ.P. 12(b)(6);
23 *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at 555-57, 570; *Moss*, 572 F.3d at 969.

24 **E. Due Process and Allegation Regarding the Computer Moratorium**

25 Defendants contend that Plaintiff fails to state a claim for violation of his right to substantive
26 due process with regard to the computer moratorium because he fails to allege a constitutionally-
27 protected right to possess a personal computer (Supplemental Motion at 18). As set out above,
28 Plaintiff is unable to demonstrate a Fourteenth Amendment due process violation unless he can
identify "a liberty or property interest protected by the constitution" of which he was deprived.

1 *Wright*, 219 F.3d at 913. Due process rights to life, liberty or property can arise directly from the
2 Constitution or can be created by state law. Here, Plaintiff alleges no constitutional right to possess
3 a
4 personal computer at CSH and alleges no state-created right to which due process attaches. Thus,
5 Plaintiff has failed to allege a Fourteenth Amendment substantive due process claim pertaining to
6 the computer moratorium. Fed. R. Civ. P. 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S.
7 at 555-57, 570; *Moss*, 572 F.3d at 969.

8 **F. Conspiracy Claim under 18 U.S.C. §§ 1702 and 1708**

9 Defendants contend that Plaintiff fails to state a claim for conspiracy to violate 18 U.S.C.
10 sections 1702 and 1708 because there is no private right of action under these penal statutes
11 governing criminal offenses for obstruction and theft of mail. (Motion at 14-15.) Defendants are
12 correct. Title 18 U.S.C. sections 1702 and 1708 are penal statutes governing criminal offenses, and
13 there is no private right of action under these criminal statutes. *Schowengerdt v. General Dynamics*
14 *Corp.*, 823 F.2d 1328 (9th Cir. 1987); *Contemporary Mission, Inc. v. U.S. Postal Service*, 648 F.2d
15 97 (2d Cir. 1981). Thus, Plaintiff cannot allege a claim for conspiracy to violate federal criminal
16 statutes. Fed.R.Civ.P. 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at 555-57, 570;
17 *Moss*, 572 F.3d at 969.

18 **G. Equal Protection and Allegations Regarding the Computer Moratorium**

19 Defendants contend that Plaintiff fails to state a claim for violation of his right to equal
20 protection under the law with regard to the computer moratorium because he fails to allege that he is
21 a member of an identifiable class, that he was intentionally treated differently from others similarly
22 situated, and that there is no rational basis for the difference in treatment. (Supplemental Motion at
23 17-18.) “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall
24 ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a
25 direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne*
26 *Living Ctr.*, 473 U.S. 432, 439 (1985) (citations omitted). To assert a valid equal protection claim,
27 Plaintiff must allege: (1) he is a member of an identifiable class; (2) sufficient facts to show
28 Defendants treated him differently from other similarly situated persons; and (3) Defendants acted

1 with an intent or purpose to discriminate against him based on his membership in the identifiable
2 class. *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134 (9th Cir. 2003).

3 As part of Count 3 (SAC at 8-9), Plaintiff alleges that, in or about March 2007, Defendant
4 CSH enacted a computer moratorium with regard to Administrative Directive 654, which allows
5 civil detainees to own and possess personal computers. Plaintiff alleges that, on October 8, 2008,
6 Plaintiff appealed the moratorium to the CSH's Acting Executive Director, Pam Ahlin, who is not a
7 named defendant in this action. Plaintiff further alleges that Ms. Ahlin informed Plaintiff that "The
8 Department of Mental Health ["DMH"] has recently established a statewide workgroup to develop
9 an appropriate policy for application in all DMH facilities concerning the use of personal
10 computers." (SAC at 8.) At the time of the filing of the SAC, no decision had been made
11 regarding the personal computer policy at Defendant CSH. The result of the disparate treatment, as
12 alleged by Plaintiff, is that 700 of 900 SVPs civilly committed at CSH are being denied the right to
13 own a personal computer, while 200 are allowed to own a personal computer. (SAC at 8-9.)

14 Plaintiff alleges that he is a member of a class of SVPs; however, "[a]n equal protection
15 claim will not lie by "conflating all persons not injured into a preferred class receiving better
16 treatment' than the plaintiff." *Thornton v. City of St Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005)
17 (internal citation omitted). In addition,

18 Although "[a] successful equal protection claim may be brought by a 'class of one,'" the plaintiff still bears the burden of proving that [h]e "has been intentionally treated
19 differently from others similarly situated and that there is no rational basis for the
20 difference in treatment." *SeaRiver Mar. Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662,
679 (9th cir. 2002).

21 *Thornton*, 425 F.3d at 1167. So, while Plaintiff does allege he is a member of an identifiable class,
22 and alleges Defendants treated him differently from other similarly situated persons, he does *not*
23 allege

24 Defendants acted with an intent or purpose to discriminate against him based on his membership in
25 the class, nor does he allege that no rational basis existed for such disparate treatment. *Flores*, 324
26 F.3d at 1134; *Thornton*, 425 F.3d at 1167. Thus, Plaintiff has failed to properly allege an Equal

1 Protection claim pertaining to the computer moratorium. Fed.R.Civ.P. 12(b)(6); *Iqbal*, 129 S.Ct. at
2 1949-50; *Twombly*, 550 U.S. at 555-57, 570; *Moss*, 572 F.3d at 969.⁴

3 **H. Allegations Against Defendant Zavala and Allegations of Conspiracy**

4 As part of Claim 1 (SAC at 4-5), Plaintiff alleges that Defendant Zavala acted in concert with
5 Defendant Joya to delay, obstruct and deprive Plaintiff of his constitutional right to send and receive
6 mail under the First Amendment. However, Plaintiff alleges no wrongdoing against Defendant
7 Zavala and, instead, alleges that she allowed Plaintiff to place his Pell Grant check in an envelope
8 addressed to his home and place it in the mail receptacle.

9 Defendant Zavala contends she should be dismissed because Plaintiff fails to allege wrongful
10 conduct on her part and because Plaintiff fails to properly allege a conspiracy claim against her.
11 (Motion at 22-23.) Defendant is correct. To allege a claim of conspiracy under section 1983,
12 Plaintiff must allege facts with sufficient particularity to show an agreement or a meeting of the
13 minds to violate Plaintiff's constitutional rights. *Margolis v. Ryan*, 140 F.3d 850, 853 (9th
14 Cir.1998); *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir.1989). "Vague and
15 conclusory allegations of official participation in civil rights violations are not sufficient to
16 withstand a motion to dismiss." *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir.1982); *Aldabe v.*
17 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir.1980) (conclusory allegations of conspiracy insufficient to
18 support a claim under section 1983). Here, Plaintiff has failed to allege any facts which show an
19 agreement or meeting of the minds between Defendants Zavalla and Joya to violate any of Plaintiff's
20 constitutional rights. *Woodrum*, 866 F.2d at 1126; *Aldabe*, 616 F.2d at 1092. Because plaintiff
21 alleges no wrongful conduct against Defendant Zavala, he fails to allege a conspiracy claim against
22 her and Defendant Joya. Fed.R.Civ.P. 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at
23 555-57, 570; *Moss*, 572 F.3d at 969.

24 **I. Allegations on Behalf of Third Parties**

25 Plaintiff alleges that Defendant Corona "illegally seized plaintiff's mail as well as several
26 other residents' mail coming from their respective financial institutions" (SAC at 6.)

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28 ⁴ With regard to Defendants CSH's and DMH's claim that they are immune, under the Eleventh Amendment, from a claim for injunctive relief, the Eleventh Amendment does not bar a claim for injunctive relief against state entities. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 n. 10 (1989); *Chaloux v. Killeen*, 886 F.2d 247, 252 (9th Cir.1989) (internal quotations omitted).

1 Additionally, Plaintiff attaches to the Second Amended Complaint declarations from two other
2 detainees who claim that their mail was tampered with. (SAC, Declarations of Julio Palomino and
3 Cornelius Boyle.) Defendants contend that Plaintiff’s allegations on behalf of third parties should be
4 dismissed. (Motion at 23.) Defendants are correct. Plaintiff has no standing to sue on behalf of third
5 parties. Pro se litigants have no authority to represent anyone other than themselves; therefore, they
6 lack the representative capacity to file motions and other documents on behalf of other prisoners.
7 *See Johns v. County of San Diego*, 114 F.3d 874, 877 (9th Cir.1997) (“[A] non-lawyer ‘has no
8 authority to appear as an attorney for others than himself.’” (*quoting Equity Trust v. United States*,
9 818 F.2d 696, 697 (9th Cir. 1987))). “Although a non-attorney may appear in propria persona in his
10 own behalf, that privilege is personal to him.” *Id.* (citations omitted); *see also* Fed.R.Civ.P. 11(a)
11 (“[I]f the party is not represented by an attorney, [every written motion and other paper] shall be
12 signed by the party.”). Thus, Plaintiff fails to allege a proper claim on behalf of third parties.
13 Fed.R.Civ.P. 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at 555-57, 570; *Moss*, 572
14 F.3d at 969.

15 **J. Allegations of “Failure to Train”**

16 As part of Claim 2 (SAC at 6), Plaintiff alleges “Defendant [CHS] has failed to train and
17 properly instruct its employees, agents and or staff on the proper procedures for handling
18 incoming/outgoing U.S. mail.” Defendants contend that Plaintiff’s allegations of “failure to train”
19 fail to state a claim for relief. (Motion at 24.) Defendants are correct. There is no *respondeat*
20 *superior* liability under 42 U.S.C. section 1983. *Palmer v. Sanderson*, 9 F.3d 1433, 1437-38 (9th Cir.
21 1993); *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978) (the supervisor of someone who
22 allegedly violated a plaintiff’s constitutional rights is not made liable for the violation by virtue of that
23 role). Rather, a supervisor is liable in his or her individual capacity for constitutional violations of a
24 subordinate only “if the supervisor participated in or directed the violations, or knew of the violations
25 and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *Iqbal*, 129 S.Ct
26 at 1948 (“Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that
27 each Government-official defendant, through the official's own individual actions, has violated the
28 Constitution”). Consequently, absent factual allegations of direct participation by the named state
actor, no cognizable constitutional claim is stated. *Taylor*, 880 F.2d at 1045. Plaintiff’s “failure to

1 train” allegations appear to the Court to be an attempt by Plaintiff to “get around” the prohibition on
2 *respondeat superior* liability. Thus, Plaintiff fails to allege a claim for failure to train under 42
3 U.S.C. section 1983. Fed.R.Civ.P. 12(b)(6); *Iqbal*, 129 S.Ct. at 1949-50; *Twombly*, 550 U.S. at 555-
4 57, 570; *Moss*, 572 F.3d at 969.

5 **K. State Law Claim**

6 Defendants contend that the Court should decline to exercise supplemental jurisdiction over
7 Plaintiff’s state law “underground regulation claim,” that Defendant CSH’s mail and package
8 procedures for individuals (as embodied in Administrative Directive 624) were not properly adopted
9 as a regulation under the state Administrative Procedures Act. (SAC at 6-7 and Exhibit 1.) In any
10 event, Defendants argue, Plaintiff fails to properly state any such claim. (Supplemental Motion at
11 19-20.) The Court agrees that Plaintiff’s “underground regulation claim” should not proceed as a
12 separate state claim. Plaintiff suggests that Administrative Directive 624 is invalid, but he does not
13 identify any state law tort or any other basis that would support considering the allegation as a state
14 claim separate and apart from the federal claims alleged. Thus, Plaintiff fails to allege a separate
15 state law claim regarding the “underground regulation.” Fed.R.Civ.P. 12(b)(6); *Iqbal*, 129 S.Ct. at
16 1949-50; *Twombly*, 550 U.S. at 555-57, 570; *Moss*, 572 F.3d at 969.

17 **IV. CONCLUSION AND ORDER**

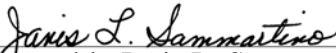
18 Based on the foregoing, Defendants’ Motion to Dismiss the Second Amended Complaint
19 [Doc. No. 18] and Defendants’ Supplemental Motion to Dismiss the Second Amended Complaint
20 [Doc. No. 27] are hereby:

- 21 1) **GRANTED** with leave to amend only as to Plaintiff’s Equal Protection claim against
22 Defendants CSH and DMH regarding the computer moratorium (SAC, Count 3, pp.
23 8-9). Plaintiff shall file a Third Amended Complaint in compliance with the Court’s
24 rulings set out above within 30 days from the date this Order is stamped “Filed”
25 pursuant to Fed.R.Civ.P. 12(a)(4)(A).; and
- 26 2) **GRANTED** without leave to amend as to all other claims and Defendants.
- 27 3) Plaintiff’s Motion for Preliminary Injunction and Temporary Restraining Order [Doc.
28 No. 23] is hereby **DENIED AS MOOT**.

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IT IS SO ORDERED.

DATED: March 8, 2010



Honorable Janis L. Sammartino
United States District Judge