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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JOHN P. SEMENECK,	)	Case No.: 1:09-cv-00566 JLT (PC)
	)	
Plaintiff,	)	ORDER DISMISSING FIRST AMENDED
	)	COMPLAINT WITH PREJUDICE FOR
v.	)	FAILURE TO STATE A CLAIM
	)	
PAM AHLIN, et al.,	)	
	)	
Defendants.	)	
_____	)	

John P. Semeneck (“Plaintiff”) is a civil detainee at Coalinga State Hospital (“CSH”) proceeding *pro se* and *in forma pauperis* in this civil action filed pursuant to 42 U.S.C. § 1983 against the following individuals at CSH: Pam Ahlin, Executive Director; Rick Daley, Chief of Central Program Services; Gary Keike, Chief of Central Program Services; Diane Wilson, Mail Room Supervisor; Yvonne Beuster, Trust Office Supervisor; Mail Room Staff; and Trust Office Staff (collectively, “Defendants”). Plaintiff filed this action on March 27, 2009. (Doc. 1). Plaintiff supplemented his Complaint on April 16, 2009. (Doc. 7). On October 20, 2009, the Court reviewed the Supplemented Complaint and issued its Order dismissing the Complaint and Supplemental Complaint for failure to state any claims upon which relief could be granted (Doc. 11). Plaintiff filed a motion for reconsideration on November, 20, 2009. (Doc. 12), which was denied on

1 November 23, 2009. (Doc. 13). On December 31, 2009, Plaintiff filed his First Amended  
2 Complaint (Doc. 18), which is now before the Court.

3 **I. Screening Requirement**

4 Where a detainee or prisoner seeks relief against “a governmental entity or officer or  
5 employee of a governmental entity,” the Court is required to review the complaint and identify  
6 “cognizable claims.” 28 U.S.C § 1915(a)-(b). The Court must dismiss a complaint, or portion of the  
7 complaint, if it is “frivolous, malicious or fails to state a claim upon which relief may be granted;  
8 or... seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. §  
9 1915A(b); 28 U.S.C. § 1915(e)(2). A claim is frivolous “when the facts alleged rise to the level of  
10 the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to  
11 contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992). In determining malice, the  
12 Court examines whether the claims are pled in good faith. *Kinney v. Plymouth Rock Squab. Co.*, 236  
13 U.S. 43, 46 (1915).

14 **II. Pleading Standards**

15 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure.  
16 A pleading stating a claim for relief must include a statement affirming the court’s jurisdiction, “a  
17 short and plain statement of the claim showing the pleader is entitled to relief; and... a demand for  
18 the relief sought, which may include relief in the alternative or different types of relief.”  
19 Fed.R.Civ.P. 8(a). The Federal Rules adopt a flexible pleading policy, and *pro se* pleadings are held  
20 to “less stringent standards” than pleadings drafted by attorneys. *Haines v. Kerner*, 404 U.S. 519,  
21 520-21 (1972).

22 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and  
23 succinct manner. *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The  
24 purpose of the complaint is to give the defendant fair notice of the claims against him, and the  
25 grounds upon which the complaint stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).  
26 The Supreme Court noted,

27 Rule 8 does not require detailed factual allegations, but it demands more than an  
28 unadorned, the-defendant-unlawfully-harmed-me unlawfully accusation. A pleading that  
offers labels and conclusions or a formulaic recitation of the elements of a cause of

1 action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of  
2 further factual enhancement.

3 *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (internal quotation marks and citations omitted).

4 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673  
5 F.2d 266, 268 (9th Cir. 1982). The Court clarified further that,

6 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim  
7 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when the  
8 plaintiff pleads factual content that allows the court to draw the reasonable inference that  
9 the defendant is liable for the misconduct alleged. [Citation]. The plausibility standard  
10 is not akin to a “probability requirement,” but it asks for more than a sheer possibility  
11 that a defendant has acted unlawfully. [Citation]. Where a complaint pleads facts that  
12 are “merely consistent with” a defendant’s liability, it “stops short of the line between  
13 possibility and plausibility of ‘entitlement to relief.’

14 *Iqbal*, 129 S.Ct. at 1949. When the factual allegations are well-pled, a court should assume their  
15 truth and determine whether the facts would make the plaintiff entitled to relief; conclusions in the  
16 pleading are not entitled to the same assumption of truth. *Id.* If the Court determines that the  
17 complaint fails to state a cognizable claim, the Court may grant leave to amend to the extent that  
18 deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*, 203 F.3d 1122, 1127-  
19 28 (9th Cir. 2000) (en banc).

### 20 **III. § 1983 Claims**

21 Section 1983 of title 42 of the United States Code does not provide for substantive rights; it  
22 is “a method for vindicating federal rights elsewhere conferred.” *Albright v. Oliver*, 510 U.S. 266,  
23 271 (1994). In pertinent part, Section 1983 states:

24 Every person who, under color of any statute, ordinance, regulation, custom, or usage,  
25 of any State or Territory or the District of Columbia, subjects, or causes to be subjected,  
26 any citizen of the United States or other person within the jurisdiction thereof to the  
27 deprivation of any rights, privileges, or immunities secured by the Constitution and laws,  
28 shall be liable to the party injured in an action at law, suit in equity, or other proper  
proceeding for redress...

42 U.S.C. § 1983. To plead a § 1983 violation, a plaintiff must allege facts from which it may be  
inferred that (1) he was deprived of a federal right, and (2) a person who committed the alleged  
violation acted under color of state law. *West v. Atkins*, 487 U.S. 42, 28 (1988); *Williams v. Gorton*,  
529 F.2d 668, 670 (9th Cir. 1976). In addition, a plaintiff must allege that he suffered a specific

1 injury, and show causal relationship between the defendant's conduct and the injury suffered by the  
2 plaintiff. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976); *Johnson v. Duffy*, 588 F.2d 740,  
3 743 (9th Cir. 1978) (a person deprives another of a federal right "if he does an affirmative act,  
4 participates in another's affirmative acts, or omits to perform an act which he is legally required to  
5 do so that it causes the deprivation of which complaint is made"). As with other complaints,  
6 conclusory allegations unsupported by facts are insufficient to state a civil rights claim under § 1983.  
7 *Sherman v. Yakahi*, 549 F.2d 1287, 1290 (9th Cir. 1977).

#### 8 **IV. Discussion and Analysis**

9 According to Plaintiff, he delivered nine envelopes marked "legal mail" to the psychiatric  
10 technician for mailing on March 8, 2009. (Doc. 18 at 12). The envelopes were addressed to the  
11 following individuals: Earl Sanders, Department of Justice; Pam Ahlin, Executive Director of CSH;  
12 Dr. Sing, Chief Medical Officer; Steven Mayberg, Director of California Department of Mental  
13 Health; Arnold Schwarzenegger, Governor of California; Virginia Cunningham, Unit T-01  
14 Supervisor; Dinah Granafei, Attorney, Orange County Public Defender's Office; Jerry Brown,  
15 Attorney General of California; and Erick Holder, United States Attorney General. *Id.*  
16 Approximately three days later, five of the envelopes were returned to Plaintiff with a note that  
17 stated indigent patients were permitted to send only one letter per week. *Id.* at 12-13.

18 On March 26, 2009, Plaintiff mailed two manila envelopes labeled "legal mail" and  
19 addressed to Dina Granafei. The envelopes were returned to Plaintiff with Post-It notes indicating  
20 the amount of postage due. (Doc. 18 at 13, Exhibits 11-12). Also, Plaintiff received a note stating  
21 that indigent individuals "are allowed postage at the State expense for legal mail addressed to the  
22 courts only. These letters are not addressed to the court. Therefore, it will be your responsibility to  
23 apply postage in the amount of \$1.51 & 1.34." (Doc. 18, Ex. 13).

24 In addition, Plaintiff alleges that he had "prior incidents regarding this very issue of being  
25 denied access to the Courts by failing to place postage on envelopes addressed to Defendants and/or  
26 respondents." (Doc 18 at 13). In September of 2008, Plaintiff submitted a writ of habeas corpus to  
27 the Orange County Superior Court, which he states "could have been summarily dismissed for no  
28 other reason than failing to follow the rules of court. . ." *Id.*

1           Given these facts, Plaintiff alleges that Defendants violated his right of access to the courts.  
2 Specifically, Plaintiff alleges that Defendants’ “[f]ailing to place postage onto envelopes that were  
3 properly marked per the Administrations (sic) request and orders (Administrative Directives) being  
4 sent to an [a]ttorney” caused violations of the First, Sixth, and Fourteenth Amendments to the  
5 Constitution. (Doc. 18 at 5).

6           A. Plaintiff’s Status as a Detainee

7           Plaintiff is a detainee at Coalinga State Hospital. “[T]he rights afforded prisoners set a floor  
8 for those that must be afforded. . . civil detainees.” *McNeal v. Mayberg*, 2008 U.S. Dist. LEXIS  
9 101926, at \*11 (E.D. Cal. Dec. 3, 2008), citing *Hydrick v. Hunter*, 500 F.3d 978, 989 (9th Cir. 2007).  
10 Therefore, though Plaintiff is a detainee and not a prisoner, the Court may refer to the rights of  
11 prisoners to determine the rights afforded Plaintiff.

12           B. Access to the Courts

13           Prisoners have a fundamental constitutional right of “meaningful” access to the courts. *Lewis*  
14 *v. Casey*, 518 U.S. 343, 246 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977). Likewise, detainees  
15 have a protected right of access to the courts, because detainees retain even greater protections than  
16 individuals detained under criminal process. *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982); *Jones*  
17 *v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004). In *Lewis*, the Supreme Court defined prisoners’ right  
18 of access to the courts as the “right to bring to court a grievance.” *Lewis*, 518 U.S. at 354. In  
19 addition, the right of access to courts is limited to direct criminal appeals, habeas corpus  
20 proceedings, and civil rights actions challenging conditions of confinement. *Id.* at 351. A prisoner  
21 or detainee alleging a violation of his right of access to the courts must demonstrate that he has  
22 suffered an “actual injury.” *Id.* at 349-50.

23           An actual injury is “actual prejudice with respect to contemplated or existing litigation, such  
24 as the inability to meet a filing deadline or to present a claim.” *Lewis*, 518 U.S. at 348. Therefore, to  
25 demonstrate an actual injury, a plaintiff must show that the defendants “hindered his efforts to pursue  
26 a legal claim.” *Id.* at 351. When seeking relief for a lost opportunity to present a legal claim or  
27 relief from an unfavorable outcome in a prior legal claim, “a plaintiff must show 1) the loss of a non-  
28 frivolous or arguable claim; 2) the defendant’s acts frustrating the litigation; and 3) that the relief

1 sought is unobtainable in a presently existing suit.” *Hollis v. York*, 2010 U.S. Dist. LEXIS 109820,  
2 at \*19 (E.D. Cal. Oct. 15, 2010), citing *Christopher v. Harbury*, 536 U.S. 403, 413-416 (2002).

3 Under CSH policy, indigent individuals such as Plaintiff have the right to send “legal  
4 documents (i.e., pleadings, writs, documents for court filings, and proof of service documents) will  
5 be mailed to the courts using first class postage, at the State’s expense.” (Doc. 18, Ex. 7). Also,  
6 individuals have the right to mail legal documents to attorneys. *Id.* According to Plaintiff, the  
7 envelopes he attempted to send were labeled “legal mail.” Notably, though the definition of “legal  
8 mail” may be broad, not all mail sent to government agencies and officials must be treated as legal  
9 mail. *O’Keefe v. Van Boening*, 82 F.3d 322, 326 (9th Cir. 1996) (a prison need not treat all  
10 “grievance mail” directed to state agencies or officials as “legal mail” and may treat it as regular  
11 mail).

12 Plaintiff fails to make any factual allegations that Defendants hindered his efforts in pursuing  
13 a legal claim, or that he suffered the loss of a non-frivolous claim. With regard to the envelopes  
14 addressed to his attorney, Ms. Dinah Granafei, this Court noted:

15 Although Plaintiff alleges in his complaint that she is his public defender, nowhere on  
16 the envelopes is Ms. Granafei identified as a public defender or the address identified as  
17 the Public Defender’s Office. There is no indication that staff members were aware, or  
18 should have been aware, that mail was intended for Plaintiff’s public defender. Merely  
19 marking mail “legal mail” is not sufficient. Plaintiff bears some obligation to identify  
the intended recipient with enough clarity to allow staff to recognize that the mail falls  
within section IV(E)(3) of Administrative Directive Number 608, which provides  
Plaintiff the right to mail legal documents to his attorney without prepayment of fees.

20 (Doc. 11 at 5). As to mail that was returned to Plaintiff the year before for similar reasons, Plaintiff  
21 mentions a habeas corpus petition that “*could have been* summarily dismissed for no other reason  
22 than failing to follow the rules of court,” however, it was not. (Doc. 18 at 13) (emphasis added). As  
23 to the set of mail at issue in this case sent March 8, 2009, he fails to allege any facts to demonstrate  
24 that the intended recipients of the letter were, in fact, actual defendants in any lawsuit that he had  
25 already initiated. Even if they were, he has not alleged that the delay in the mail caused him any  
26 harm in the litigation. More importantly, Plaintiff’s complaint makes clear that he has not suffered  
27 an actual injury due to Defendants’ actions but, instead, complains only about being required to  
28 either pay for postage or to comply with the legal mail postage policy, i.e. identifying that the mail

1 was being sent to his Deputy Public Defender. Therefore, Plaintiff is unable to state a cognizable  
2 claim against Defendants for a denial of his right to access the courts.

3 C. Failure to Supervise

4 Generally, supervisors cannot be held liable under  $\square$  1983 for the actions of their  
5 subordinates, and there is no *respondeat superior* liability. *See Monell v. Dep't of Soc. Servs.* 436  
6 U.S. 658, 692-96 (1978); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (requiring personal  
7 participation in an alleged constitutional violation). However, the failure to supervise employees can  
8 lead to  $\square$  1983 liability where there is a history of widespread abuse. *Abeytia v. Fresno Police Dep't*,  
9 2009 U.S. Dist. LEXIS 49500, at \*23 (E.D. Cal. June 12, 2009). To prevail on a claim that the  
10 defendants had a policy or custom of inadequate supervision, Plaintiff must establish that this policy  
11 caused a constitutional deprivation of his rights. *See Hammond v. County of Madera*, 859 F.2d 797,  
12 801-02 (9th Cir. 1988); *Van Ort v. Estate of Stanewich*, 92 F3d. 831, 837 (9th Cir. 1996).

13 Plaintiff alleges that the Acting Executive Director of CSH, Pam Ahlin failed to insure that  
14 personnel at CSH acted in manners consistent with Plaintiff's right of access to the courts. (Doc. 18  
15 at 1-2). In addition, Plaintiff asserts that Rick Daley and Gary Deike, acting as Chiefs of Central  
16 Program Services at CSH, failed to ensure that their subordinates comply with a policy protecting  
17 Plaintiff's access to the courts. *Id.* at 3. Diane Wilson, Supervisor of the Mail Room at CSH, is  
18 liable according to Plaintiff, because she "blinded herself and looked the other way when she knows  
19 or should have known that the subordinates under her direct supervision" violated Plaintiff's right to  
20 access the court. Finally, Plaintiff argues that Yvonne Beuster, as the Supervisor of the Trust Office  
21 for CSH, should have known that the policies in place caused her subordinates to violate Plaintiff's  
22 rights.

23 With these allegations, Plaintiff seeks to hold defendants Ahlin, Daley, Deike, Wilson, and  
24 Beuster liable for the actions of their subordinates. However, each defendant is liable only for his or  
25 her own misconduct, and Plaintiff has not established that any policy in place caused a constitutional  
26 deprivation of his rights to access the courts. Therefore, Plaintiff is unable to state a cognizable  
27 claim for a failure to supervise against defendants Ahlin, Daley, Deike, Wilson, and Beuster.

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1           D. Due Process and the Right to Postage

2           The Due Process Clause of the Fourteenth Amendment provides, “No State shall. . . deprive  
3 any person of life, liberty, or property, without due process of law.” *U.S. Constitution, amend. XIV*  
4 §1. This clause guarantees both procedural and substantive due process. The procedural due process  
5 component protects individuals against the deprivation of liberty or property by the government,  
6 while substantive due process protects individuals from the arbitrary deprivation of liberty by the  
7 government. *Portman v. County of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993); *Brittain v.*  
8 *Hansen*, 451 F.3d 982, 991 (9th Cir. 2006). Because Plaintiff is a detainee in a state hospital, some  
9 curtailment of his rights may be expected. *See Overton v. Bazzetta*, 529 U.S. 126, 131 (2003);  
10 *Hydrick v. Hunter*, 500 F.3d 978, 991 (9th Cir. 2007). For Plaintiff to raise a cognizable § 1983  
11 claim based upon procedural due process, he must fulfill “three elements: (1) a liberty or property  
12 interest protected by the Constitution; (2) a deprivation of the interest by the government, and (3)  
13 lack of process.” *Portman*, 995 F.2d at 904. Thus, to state a cognizable claim for deprivation of due  
14 process, Plaintiff must first establish the existence of a protected property interest. Specifically,  
15 Plaintiff’s Complaint depends on whether there is a constitutionally protected right to postage for  
16 mailing letters.

17           For an indigent prisoner, the right to “postage stamps at state expense to mail legal  
18 documents” is included in the right to access the courts. *King v. Atiyeh*, 814 F.2d 565, 569 (9th Cir.  
19 1987), citing *Bounds*, 403 U.S. at 825-25. However, the right to free postage may be limited. *See,*  
20 *e.g. id* (indigent inmates “must be provided postage stamps at state expense to mail legal documents,  
21 although a state may adopt reasonable postage stamp regulations”); *Twyman v. Crisp*, 584 F.2d 352,  
22 358-59 (10th Cir. 1978); *Bach v. Coughlin*, 508 F.2d 303, 307-08 (7th Cir. 1974) (regulations on  
23 mail “are a reasonable attempt to balance the right of prisoners to use the mails with prison  
24 budgetary considerations”). This Court held previously,

25           [A] plaintiff *does not have a constitutional right to postage*, even if he is indigent. The  
26 Constitution does not provide plaintiff with any guarantee that he may mail whatever he  
27 chooses free of charge so long as the documents are being mailed to the courts, those  
28 holding public office, lawyers, district attorneys, or senators.



1 *Rodriguez v. Stone*, 2007 U.S. Dist. LEXIS 95789, at \*8 (E.D. Cal. Dec. 6, 2007) (emphasis added).  
2 In examining a plaintiff's right to postage of mail, "a reviewing court should focus on whether the  
3 individual plaintiff. . . has been denied meaningful access to the courts." *King*, 814 F.2d at 568.

4 As established above, Plaintiff was not denied meaningful access to the courts. Plaintiff  
5 failed to establish the existence of a protected property interest, and his claim for a Fourteenth  
6 Amendment violation is without merit. Therefore, Plaintiff cannot state a cognizable claim against  
7 Defendants for denial of postage.

8 **V. Conclusion and Order**

9 Based upon the foregoing, the Court finds that Plaintiff's First Amended Complaint fails to  
10 state any cognizable claims upon which relief may be granted under § 1983. Similarly, Plaintiff's  
11 Complaint and Supplemental Complaint failed to state claims upon which relief could be granted.  
12 Accordingly, the Court finds that the deficiencies outlined above are not capable of being cured by  
13 amendment, and therefore leave to amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Noll  
14 v. Carlson, 809 F. 2d 1446, 1448-49 (9th Cir. 1987).

15 Therefore, it **IS HEREBY ORDERED**:

- 16 1. This action is **DISMISSED WITH PREJUDICE**; and
- 17 2. Because this Order dismissing the First Amended Complaint concludes this case, the  
18 Clerk of the Court is ordered to close this matter.

19  
20 IT IS SO ORDERED.

21 Dated: November 16, 2010

21 /s/ Jennifer L. Thurston  
22 UNITED STATES MAGISTRATE JUDGE

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