

## UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES THOMAS TOMALA,

CASE NO. 1:09-cv-01600-DLB PC

Plaintiff,

ORDER DISMISSING COMPLAINT WITH  
LEAVE TO AMEND FOR FAILURE TO  
STATE ANY FEDERAL CLAIMS

v.

TROY DAVIS, et al.,

(Doc. 1)

Defendants.

RESPONSE DUE WITHIN 30 DAYS

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Order**I. Screening Requirement**

Plaintiff James Thomas Tomala (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint that initiated this action on September 2, 2009, in the Sacramento Division of the Eastern District of California. The case was transferred to the Fresno Division on September 10, 2009.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or

1 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
2 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been  
3 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
4 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §  
5 1915(e)(2)(B)(ii).

6 A complaint must contain “a short and plain statement of the claim showing that the  
7 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
8 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
9 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing  
10 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient  
11 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Iqbal, 129 S. Ct.  
12 at 1949 (quoting Twombly, 550 U.S. at 555). While factual allegations are accepted as true,  
13 legal conclusions are not. Id. at 1949.

14 **II. Summary of Complaint**

15 Plaintiff is currently incarcerated at the Sierra Conservation Center (“SCC”) in  
16 Jamestown, California, where the events giving rise to this action occurred. Plaintiff names as  
17 Defendants: correctional lieutenant Troy Davis, appeals coordinator W. Semsen, secretary of  
18 CDCR Mathew Cate, warden Ivan D. Clay, and chief of inmate appeals N. Grannis. Plaintiff  
19 alleges the following.

20 Plaintiff received a CDC-128B Informational Chrono dated October 20, 2008, written by  
21 Defendant Davis. Defendant Davis wrote that Plaintiff was involved in a homosexual  
22 relationship with his cellmate, and recommending separation of the two inmates to prevent  
23 further occurrences of the behavior. Plaintiff however was not at the SCC, but was rather in the  
24 administrative segregation unit for an unrelated matter. Defendant Davis then re-wrote the  
25 chrono. Plaintiff filed a grievance against Defendant Davis. (Pl.’s Compl. 3-5.)

26 Plaintiff contends a violation of Plaintiff’s First Amendment right to petition the  
27 government for redress of grievances, due process, defamation of character, respondeat superior  
28 liability, and intentional infliction of emotional distress. Plaintiff seeks monetary damages.

1     **III.    Analysis**

2       **A.      Redress Of Grievances/Access To The Courts**

3       Plaintiff contends that Defendant Semsen returned Plaintiff's grievance against Davis.

4       Defendant Semsen allegedly refused to process the complaint as misconduct against a peace  
5       officer. Plaintiff contends that he appealed this decision, and Defendant Clay through his agent  
6       Chief Deputy Warden F. X. Chavez denied treating the complaint as a staff complaint. Plaintiff  
7       appealed this decision to the Director Matthew Cate. Defendant Grannis on behalf of the  
8       Director refused to process the complaint as a staff complaint. (Pl.'s Compl. 5-6.)

9       Inmates have a fundamental right of access to the courts. Lewis v. Casey, 518 U.S. 343,  
10 346 (1996). The right is limited to direct criminal appeals, habeas petitions, and civil rights  
11 actions. Id. at 354. Claims for denial of access to the courts may arise from the frustration or  
12 hindrance of "a litigating opportunity yet to be gained" (forward-looking access claim) or from  
13 the loss of a meritorious suit that cannot now be tried (backward-looking claim). Christopher v.  
14 Harbury, 536 U.S. 403, 412-15 (2002). For backward-looking claims such as that at issue here,  
15 plaintiff must show: 1) the loss of a 'nonfrivolous' or 'arguable' underlying claim; 2) the official  
16 acts frustrating the litigation; and 3) a remedy that may be awarded as recompense but that is not  
17 otherwise available in a future suit. Id. at 413-14.

18       The first element requires that plaintiff show he suffered an "actual injury" by being shut  
19 out of court. Harbury, 536 U.S. at 415; Lewis, 518 U.S. at 351. The second element requires  
20 that plaintiff show defendant proximately caused the alleged violation of plaintiff's rights, the  
21 touchstone of which is foreseeability. Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991)  
22 (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981)); see Tahoe-Sierra Pres. Council, Inc. v.  
23 Tahoe Regional Planning Agency, 216 F.3d 764, 784-85 (9th Cir. 2000). Finally, the third  
24 element requires that plaintiff show he has no other remedy than the relief available via *this* suit  
25 for denial of access to the courts. Harbury, 536 U.S. at 415.

26       Plaintiff's allegations fail to state a cognizable access to the courts claim. Plaintiff's  
27 citation to Bradley v. Hall, 64 F.3d 1276 (9th Cir. 1995), is unavailing here. Prison officials are  
28 not to penalize a prisoner's access to the courts. Id. at 1279. However, Plaintiff fails to allege

1 any facts indicating that he was penalized as a result of his filing of prison grievances. Plaintiff  
2 also fails to allege the loss of any meritorious suit or action, thus failing to satisfy the actual  
3 injury requirement of an access to the courts claim. Defendants' alleged failure to categorize  
4 Plaintiff's complaint as a staff complaint is not sufficient to state a cognizable access to the  
5 courts claim. Plaintiff thus fails to state a cognizable claim against Defendants Semsen, Clay,  
6 Cate, and Grannis.

7 Additionally, a prison grievance is a procedural right only and does not confer any  
8 constitutional rights under the Due Process Clause. Ramirez v. Galaza, 334 F.3d 850, 860 (9th  
9 Cir. 2003) (no liberty interest in processing of appeals because no entitlement to specific  
10 grievance procedure); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). Defendants' failure to  
11 process Plaintiff's inmate appeal as a staff complaint is not sufficient to invoke the protections of  
12 the Due Process Clause.

13 **B. Due Process**

14 Plaintiff contends that Defendant Davis's action in releasing a chrono that categorized  
15 Plaintiff as a homosexual violated his due process rights. The Court analyzes Plaintiff's claim  
16 under both the procedural and substantive components of the Due Process Clause.

17 The Due Process Clause protects prisoners from being deprived of life, liberty, or  
18 property without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Plaintiff  
19 has not alleged any facts that would support a claim that he was deprived of a protected interest  
20 without procedural due process by Defendant Davis.

21 "To establish a violation of substantive due process . . . , a plaintiff is ordinarily required  
22 to prove that a challenged government action was clearly arbitrary and unreasonable, having no  
23 substantial relation to the public health, safety, morals, or general welfare. Where a particular  
24 amendment provides an explicit textual source of constitutional protection against a particular  
25 sort of government behavior, that Amendment, not the more generalized notion of substantive  
26 due process, must be the guide for analyzing a plaintiff's claims." Patel v. Penman, 103 F.3d  
27 868, 874 (9th Cir. 1996) (citations, internal quotations, and brackets omitted), cert. denied, 117  
28 S. Ct. 1845 (1997); see County of Sacramento v. Lewis, 523 U.S. 833, 842 (1998). Plaintiff has

1 not alleged any facts that would support a claim that his rights under the Fourteenth Amendment  
2 were infringed.

3       **C. Supervisory Liability**

4       Under § 1983, Plaintiff must demonstrate that each defendant *personally* participated in  
5 the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) (emphasis  
6 added). The Supreme Court recently emphasized that the term “supervisory liability,” loosely  
7 and commonly used by both courts and litigants alike, is a misnomer. Iqbal, 129 S. Ct at 1949.  
8 “Government officials may not be held liable for the unconstitutional conduct of their  
9 subordinates under a theory of *respondeat superior*.” Id. at 1948. Rather, each government  
10 official, regardless of his or her title, is only liable for his or her own misconduct, and therefore,  
11 Plaintiff must demonstrate that each defendant, through his or her own individual actions,  
12 violated Plaintiff’s constitutional rights. Id. at 1948-49.

13       Plaintiff fails to allege any facts that support a claim that Defendants Clay and Cate  
14 violated Plaintiff’s constitutional rights. Plaintiff alleges that Defendants should have known of  
15 the violations occurring, and that their behavior was reckless deliberately indifferent. (Pl’s  
16 Compl. 9-10.) However, their role as Warden and Director, respectively, is not sufficient by itself  
17 to state a cognizable § 1983 claim. “Threadbare recitals of the elements of a cause of action,  
18 supported by mere conclusory statements, do not suffice” to state a claim in federal court. Iqbal,  
19 129 S. Ct. at 1949. Accordingly, Plaintiff fails to state a cognizable claim against Defendants  
20 Clay and Cate under a supervisory liability theory.

21       **D. State Law Claims**

22       Plaintiff alleges defamation by Defendant Davis and infliction of emotional distress by  
23 Defendants Davis, Semsen, Clay, and Cate. First, in order to state a cognizable state law claim  
24 against state actors, plaintiffs must plead compliance with California’s Torts Claims Act.  
25 California v. Super. Ct. (Bodde), 32 Cal.4th 1234, 245 (2004); Karim-Panahi v. L.A. Police  
26 Dep’t, 839 F.2d 621, 627 (9th Cir. 1988). Second, pursuant to 28 U.S.C. § 1337(a), in any civil  
27 action in which the district court has original jurisdiction, the district court “shall have  
28 supplemental jurisdiction over all other claims in the action within such original jurisdiction that

1 they form part of the same case or controversy under Article III,” except as provided in  
2 subsections (b) and (c). “[O]nce judicial power exists under § 1367(a), retention of supplemental  
3 jurisdiction over state law claims under 1367(c) is discretionary.” Acri v. Varian Assoc., Inc.,  
4 114 F.3d 999, 1000 (9th Cir. 1997). “The district court may decline to exercise supplemental  
5 jurisdiction over a claim under subsection (a) if . . . the district court has dismissed all claims  
6 over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3). The Supreme Court has  
7 cautioned that “if the federal claims are dismissed before trial, . . . the state claims should be  
8 dismissed as well.” United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966).  
9 Because Plaintiff fails to state a cognizable § 1983 claim, the Court will not exercise  
10 supplemental jurisdiction over his state law claims.

11 **IV. Conclusion and Order**

12 Plaintiff’s complaint fails to state any claims against any defendants under § 1983. The  
13 Court will provide Plaintiff with an opportunity to file a first amended complaint curing the  
14 deficiencies identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th  
15 Cir. 1987). Plaintiff may not change the nature of this suit by adding new, unrelated claims in his  
16 amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot”  
17 complaints).

18 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what  
19 each named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal  
20 rights. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Although accepted as true, the  
21 “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level . . .  
22 .” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted).

23 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,  
24 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567  
25 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded  
26 pleading,” L. R. 220. Plaintiff is warned that “[a]ll causes of action alleged in an original  
27 complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d at 567  
28 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114

1 F.3d at 1474.

2 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 3 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state any
- 4 claims under§ 1983;
- 5 2. The Clerk's Office shall send Plaintiff a complaint form;
- 6 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a
- 7 first amended complaint curing the deficiencies identified herein; and
- 8 4. If Plaintiff fails to respond within thirty (30) days, the Court will dismiss this
- 9 action for failure to obey a court order and failure to state a claim.

10 IT IS SO ORDERED.

11 Dated: April 5, 2010

12 /s/ Dennis L. Beck  
13 UNITED STATES MAGISTRATE JUDGE

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