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

TYSON JOIEL SUGGS,

CASE NO. 1:10-CV-01359-DLB PC

Plaintiff,

ORDER DISMISSING COMPLAINT FOR  
FAILURE TO STATE A CLAIM WITH  
LEAVE TO FILE AN AMENDED  
COMPLAINT

v.

JAMES WALKER, et al.,

(DOC. 1)

Defendants.

RESPONSE DUE WITHIN 30 DAYS

Screening Order

**I. Background**

Plaintiff Tyson Joiel Suggs (“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 initiated this action by filing his complaint on July 30, 2010. Doc. 1.

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

1 1915(e)(2)(B)(ii).

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

9 **II. Summary of Complaint**

10 Plaintiff was previously incarcerated at Corcoran State Prison in (“CSP-Cor”), in  
11 Corcoran, California, where the events giving rise to this action occurred. Plaintiff names as  
12 Defendants the warden of California State Prison at Sacramento (“CSP-Sac”), John Walker, and  
13 R. Rosenthal, law librarian for CSP-Cor.

14 Plaintiff alleges the following. On June 4, 2009 and June 11, 2009, the law library was  
15 closed. Plaintiff had documents for superior court and the Supreme Court that needed copying.  
16 On June 13, June 16, and June 17 of 2009, Plaintiff was neglected law library status. On June  
17 25, 2009, Plaintiff attempted to copy his transcripts for his writ of habeas corpus. On August 13,  
18 2009, Defendant Rosenthal would not copy documents at the law library.

19 Plaintiff requests as relief monetary damages. Plaintiff claims a violation of the First  
20 Amendment, Eighth Amendment, and the Due Process Clause of the Fourteenth Amendment.<sup>1</sup>  
21 Plaintiff also alleges a violation of Penal Code section 548.

22 **III. Analysis**

23 **A. Access To The Courts**

24 Plaintiff’s allegations regarding copying of his transcripts appear to concern his access to  
25 the courts. Inmates have a fundamental right of access to the courts. *Lewis v. Casey*, 518 U.S.  
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28 <sup>1</sup> Plaintiff claims a violation of the Due Process Clause of the Fourth Amendment. No such clause exists.  
The Court assumes this is an error.

1 343, 346 (1996).<sup>2</sup> The right is limited to direct criminal appeals, habeas petitions, and civil rights  
2 actions. *Id.* at 354. Claims for denial of access to the courts may arise from the frustration or  
3 hindrance of “a litigating opportunity yet to be gained” (forward-looking access claim) or from  
4 the loss of a meritorious suit that cannot now be tried (backward-looking claim). *Christopher v.*  
5 *Harbury*, 536 U.S. 403, 412-15 (2002). For backward-looking claims such as that at issue here,  
6 plaintiff must show: 1) the loss of a ‘nonfrivolous’ or ‘arguable’ underlying claim; 2) the official  
7 acts frustrating the litigation; and 3) a remedy that may be awarded as recompense but that is not  
8 otherwise available in a future suit. *Id.* at 413-14.

9         The first element requires that plaintiff show he suffered an “actual injury” by being shut  
10 out of court. *Harbury*, 536 U.S. at 415; *Lewis*, 518 U.S. at 351. The second element requires  
11 that plaintiff show defendant proximately caused the alleged violation of plaintiff’s rights, the  
12 touchstone of which is foreseeability. *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991)  
13 (citing *Parratt v. Taylor*, 451 U.S. 527, 535 (1981)); see *Tahoe-Sierra Pres. Council, Inc. v.*  
14 *Tahoe Regional Planning Agency*, 216 F.3d 764, 784-85 (9th Cir. 2000). Finally, the third  
15 element requires that plaintiff show he has no other remedy than the relief available via *this* suit  
16 for denial of access to the courts. *Harbury*, 536 U.S. at 415. The complaint should state the  
17 underlying claim in accordance with Federal Rule of Civil Procedure 8(a). *Id.* at 417-18.

18         Plaintiff fails to state a cognizable access to the courts claim. Plaintiff fails to allege that  
19 he suffered an actual injury by being shut out of court regarding his writ of habeas corpus. It is  
20 also unclear why Defendant Rosenthal’s alleged actions in refusing to copy Plaintiff’s transcripts  
21 gives rise to an access to the courts claim, as it is unclear how this prevented Plaintiff from  
22 litigating his habeas corpus petition or filing with the habeas court. Plaintiff will be granted  
23 leave to amend as to this claim.

#### 24         **B. Eighth Amendment**

25         The Eighth Amendment protects prisoners from inhumane methods of punishment and  
26 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.

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28         <sup>2</sup> Access to the courts is analyzed under both the First Amendment and the Due Process Clause.

1 2006). Extreme deprivations are required to make out a conditions of confinement claim, and  
2 only those deprivations denying the minimal civilized measure of life's necessities are  
3 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,  
4 503 U.S. 1, 9 (1992) (citations and quotations omitted). In order to state a claim for violation of  
5 the Eighth Amendment, Plaintiff must allege facts sufficient to support a claim that officials  
6 knew of and disregarded a substantial risk of serious harm to him. *E.g., Farmer v. Brennan*, 511  
7 U.S. 825, 837 (1994); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998). Mere negligence on  
8 the part of the official is not sufficient to establish liability, but rather, the official's conduct must  
9 have been wanton. *Farmer*, 511 U.S. at 835; *Frost*, 152 F.3d at 1128.

10 Plaintiff fails to allege any acts by any Defendants that implicate the Eighth Amendment.  
11 Plaintiff thus fails to allege an Eighth Amendment claim.

### 12 **C. Linkage**

13 Plaintiff names the warden of CSP-Sac as a Defendant. At the time Plaintiff filed this  
14 action, Plaintiff was incarcerated at CSP-Sac. However, Defendant Walker is not alleged to have  
15 committed any act that violated Plaintiff's federal or constitutional rights. Under § 1983,  
16 Plaintiff is required to show that (1) each defendant acted under color of state law and (2) each  
17 defendant deprived him of rights secured by the Constitution or federal law. *Long v. County of*  
18 *Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). Accordingly, Plaintiff fails to state any claim  
19 against Defendant Walker.

### 20 **D. State Law Claim**

21 Plaintiff alleges a violation of California Penal Code section 548. This section has no  
22 bearing on this action, as it concerns crimes involving insured property.

### 23 **IV. Conclusion And Order**

24 Plaintiff fails to state any cognizable claims against any Defendants. The Court will  
25 provide Plaintiff with an opportunity to file an amended complaint curing the deficiencies  
26 identified by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987).  
27 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended  
28 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

1 If Plaintiff decides to amend, Plaintiff's amended complaint should be brief, Fed. R. Civ.  
2 P. 8(a), but must state what each named defendant did that led to the deprivation of Plaintiff's  
3 constitutional or other federal rights. *Iqbal*, 129 S. Ct. at 1449. Although accepted as true, the  
4 "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level . . .  
5 ." *Twombly*, 550 U.S. at 555.

6 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint,  
7 *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567  
8 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superseded  
9 pleading," L. R. 220. Plaintiff is warned that "[a]ll causes of action alleged in an original  
10 complaint which are not alleged in an amended complaint are waived." *King*, 814 F.2d at 567  
11 (citing to *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981)); *accord Forsyth*,  
12 114 F.3d at 1474.

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

- 14 1. The Clerk's Office shall send Plaintiff a complaint form;
- 15 2. Plaintiff's complaint is dismissed for failure to state a claim, with leave to file an  
16 amended complaint within **thirty (30) days** from the date of service of this order;  
17 and
- 18 3. If Plaintiff fails to comply with this order, the Court will dismiss this action for  
19 failure to obey a court order and failure to state a claim.

20 IT IS SO ORDERED.

21 **Dated: April 6, 2011**

21 /s/ Dennis L. Beck  
22 UNITED STATES MAGISTRATE JUDGE