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

DEVONNE O'DELL,  
  
Plaintiff,  
  
v.  
  
WARDEN KATHLEEN ALLISON, et al.,  
  
Defendants.

Case No. 1:11-cv-01202-LJO-MJS (PC)  
**ORDER DISMISSING COMPLAINT WITH  
LEAVE TO AMEND  
(ECF No. 1)**  
**AMENDED PLEADING DUE IN THIRTY-  
DAYS**

Plaintiff, a state prisoner incarcerated at Salinas Valley State Prison, initiated this action, pro se, on February 18, 2011, in Kings County Superior Court. (Notice of Removal, ECF No. 1, at 1.) In it he seeks monetary damages, injunctive relief and a declaration that his equal protection and due process rights were violated at Corcoran State Prison ("CSP") by the following Defendants: Warden Allison, Associate Warden Santoro, Correctional Counselor Fisher, Appeals Coordinator Hall, and Appeals Coordinator Allen.<sup>1</sup> Defendants Allison, Santoro, Fisher and Hall removed the matter to this Court on July 19, 2011, pursuant to 28 U.S.C. § 1441(a), based upon the Court's original jurisdiction under 28 U.S.C. § 1331.

<sup>1</sup> It appears Defendant Allen has not been served.

1 Plaintiff's Complaint is before the Court for screening.

2 **I. SCREENING REQUIREMENT**

3 The Court is required to screen complaints brought by prisoners seeking relief  
4 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
5 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has  
6 raised claims that are legally "frivolous, malicious," or that fail to state a claim upon  
7 which relief may be granted, or that seek monetary relief from a defendant who is  
8 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

9  
10 **II. PLEADING STANDARD**

11 Section 1983 "provides a cause of action for the deprivation of any rights,  
12 privileges, or immunities secured by the Constitution and laws of the United States."  
13 *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 508 (1990), quoting 42 U.S.C. § 1983.  
14 Section 1983 is not itself a source of substantive rights, but merely provides a method  
15 for vindicating federal rights conferred elsewhere. *Graham v. Connor*, 490 U.S. 386,  
16 393-94 (1989).

17  
18 To state a claim under § 1983, a plaintiff must allege two essential elements: (1)  
19 that a right secured by the Constitution or laws of the United States was violated and (2)  
20 that the alleged violation was committed by a person acting under the color of state law.  
21 See *West v. Atkins*, 487 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243,  
22 1245 (9th Cir. 1987).

23  
24 A complaint must contain "a short and plain statement of the claim showing that  
25 the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
26 are not required, but "[t]hreadbare recitals of the elements of a cause of action,  
27 supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S.  
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1 662, 678 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

2 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim that is  
3 plausible on its face.” *Id.* Facial plausibility demands more than the mere possibility that  
4 a defendant committed misconduct and, while factual allegations are accepted as true,  
5 legal conclusions are not. *Id.* at 667-68.  
6

### 7 **III. SUMMARY OF THE COMPLAINT**

8 Plaintiff claims can be summarized essentially as follows:

9 Defendants Allison and Santoro created a policy that made Plaintiff ineligible to  
10 continue working at Prison Industries Authority (“PIA”) because of his sentence and  
11 security classification. In June 2010, Plaintiff was “unassigned” from his PIA job  
12 pursuant to that policy. Defendant Fisher issued a chrono reflecting termination of  
13 Plaintiff’s PIA employment.  
14

15 Plaintiff grieved the termination, but his grievance was denied by Defendants Hall  
16 and Allen.

17 Plaintiff maintains his custody status should not have prevented his being  
18 assigned PIA employment. Other inmates with similar sentences were allowed to work  
19 at PIA. He also claims he was deprived of a pre-termination notice and hearing, and  
20 thus denied the right to present mitigating evidence.  
21

22 Plaintiff seeks monetary damages, an order directing Defendants to cease  
23 unlawful activity and a declaration his rights have been violated.

### 24 **IV. DISCUSSION**

#### 25 **A. CDCR Policy or Practice**

26 An official capacity claim for injunctive relief against a state official requires that a  
27 policy or practice of the governmental entity be the moving force behind the violation.  
28

1 *Hafer v. Melo*, 502 U.S. 21, 25 (1991).

2 Plaintiff does not allege facts demonstrating his PIA employment was terminated  
3 as a result of a decision by the CDCR and its policymaking officials or a persistent and  
4 widespread CDCR practice. *Connick v. Thompson*, —U.S. —, —, 131 S.Ct.  
5 1350, 1359 (2011). If he elects to amend, he must identify the policy and its contents,  
6 state when it was adopted, by whom, and how it led to termination of his PIA  
7 assignment.  
8

9 **B. Due Process Interest in Prison Employment**

10 The Due Process Clause protects prisoners from being deprived of liberty and  
11 property without due process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974).

12 Liberty interests may arise from the Due Process Clause itself or from state law.  
13 *Sandin v. Conner*, 515 U.S. 472, 484 (1995). Liberty interests created by state law are  
14 limited to freedom from restraint which “imposes atypical and significant hardship on the  
15 inmate in relation to the ordinary incidents of prison life.” *Id.*

17 The Supreme Court has held that “[a]s long as the conditions or degree of  
18 confinement to which the prisoner is subjected is within the sentence imposed upon him  
19 and is not otherwise violative of the Constitution, the Due Process Clause does not in  
20 itself subject an inmate's treatment by prison authorities to judicial oversight.” *Ingram v.*  
21 *Papalia*, 804 F.2d 595, 596, (10th Cir. 1986), citing *Montanye v. Haymes*, 427 U.S. 236,  
22 242 (1976).

24 The Due Process Clause of the Fourteenth Amendment does not create a  
25 property or liberty interest in prison employment. See *Walker v. Gomez*, 370 F.3d 969,  
26 973 (9th Cir. 2004), citing *Ingram*, 804 F.2d at 596.

27 Therefore, any such interest must be created by state law. Plaintiff fails to  
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1 demonstrate that California law creates a protected property or liberty interest to  
2 employment, or continued employment, in any particular job. It appears that “[e]very  
3 able-bodied person committed to the custody of the Secretary of the Department of  
4 Corrections and Rehabilitation is obligated to work as assigned by department staff . . .  
5 .” Cal. Code Regs. tit. 15 § 3040(a). Paid prison employment is a privilege. Cal. Code  
6 Regs. tit. 15 § 3040(k).

7  
8 For the reasons stated, Plaintiff has not demonstrated entitlement to protection of  
9 his PIA employment under the Due Process Clause.

### 10 **C. Procedural Due Process**

11 Plaintiff claims he was denied notice and the opportunity to present mitigating  
12 evidence prior to termination of his PIA employment. He claims entitlement to these  
13 rights because termination of his PIA assignment constituted a program change under  
14 Cal. Code Regs. tit. 15 § 3375(c), and had an adverse effect on him within the meaning  
15 of Cal. Code Regs. tit. 15 § 3375(f)(1).

16  
17 Even if it were assumed, for the sake of discussion that Plaintiff had identified an  
18 interest protected by the Due Process Clause, nothing in his pleading suggests he was  
19 denied a procedure or process due him. Removal of an inmate from a work program  
20 assignment **may** require classification committee action. Code Regs. tit. 15 § 3040(f).  
21 However, the Plaintiff has not alleged facts to show that termination of his PIA  
22 assignment was such an adverse program change that it necessitated classification  
23 committee action, or that it implicated a disciplinary or other proceeding. He also fails to  
24 set out the procedure that was followed.

25  
26 Plaintiff does not include with his pleading the work program change chrono or  
27 his administrative appeal of it or describe their contents. The Court cannot determine  
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1 why his assignment was terminated or what process, if any, was followed in terminating  
2 it. He does not identify the mitigating evidence he claims he was prevented from  
3 presenting and how its absence harmed him. Finally, Plaintiff fails to identify the basis  
4 on which he appealed and the reason given for denying his appeal.  
5

6 Plaintiff will be allowed leave to amend. If he chooses to amend, Plaintiff should  
7 supply the missing information identified above and identify the liberty or property  
8 interest denied him.

9 **D. Discrimination**

10 The Equal Protection Clause requires that persons who are similarly situated be  
11 treated alike. *City of Cleburne, Tex. v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439  
12 (1985). An equal protection claim may be established by showing that the defendant  
13 intentionally discriminated against the plaintiff based on the plaintiff's membership in a  
14 protected class, *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003), *Lee v. City of*  
15 *Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001), or that similarly situated individuals  
16 were intentionally treated differently without a rational relationship to a legitimate state  
17 purpose. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); see also *Lazy Y*  
18 *Ranch Ltd. v. Behrens*, 546 F.3d 580, 592 (9th Cir. 2008); *North Pacifica LLC v. City of*  
19 *Pacifica*, 526 F.3d 478, 486 (9th Cir. 2008).  
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22 In the prison context, however, even fundamental rights such as the right to  
23 equal protection are judged by a standard of reasonableness - specifically whether the  
24 actions of prison officials are reasonably related to legitimate penological interests.  
25 *Walker*, 370 F.3d at 974, citing *Turner v. Safley*, 482 U.S. 78, 89 (1987) (“[W]hen a  
26 prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is  
27 reasonably related to legitimate penological interests.”).  
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1 Plaintiff contends he was not allowed to work at PIA while other inmates with  
2 similar sentences were allowed to work there. However, he does not provide enough  
3 detail to enable the Court to analyze this claim. He does not identify the reasons given  
4 by Defendants for terminating the PIA work option or provide facts upon which one  
5 might discern that others similarly situated were allowed PIA employment without any  
6 institutional justification. It is not enough to simply cite to the state law and prison  
7 regulations and claim that he was treated differently.  
8

9 Additionally, Plaintiff does not show Defendants' alleged actions were motivated  
10 by an intent to discriminate. See *Washington v. Davis*, 426 U.S. 229, 239–40 (1976) (to  
11 establish a violation of the Equal Protection Clause, the prisoner must present evidence  
12 of discriminatory intent). There is no suggestion of discriminatory intent. There are no  
13 facts showing disparate treatment.  
14

15 Plaintiff will be given leave to amend. Any amended pleading should allege facts  
16 showing denial of equal protection based on his protected class or through disparate  
17 treatment.

#### 18 **E. Inmate Grievance and Prison Regulations**

19 Plaintiff claims Defendants improperly processed and decided his PIA  
20 termination grievance. However, in *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988),  
21 the Ninth Circuit held that a prisoner does not have a claim of entitlement to a grievance  
22 procedure. 855 F.2d at 640. This was reiterated in *Ramirez v. Galarza*, 334 F.3d 850,  
23 860 (9th Cir. 2003), when the Ninth Circuit observed that inmates do not have a  
24 separate constitutional entitlement to a grievance procedure.  
25

26 The inmate appeal procedure does not create any due process rights. Nor does it  
27 entitle Plaintiff to any particular action by prison staff. *Ramirez*, 334 F.3d at 860 (no  
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1 liberty interest in processing of appeals because no entitlement to a specific grievance  
2 procedure). Plaintiff's mere disagreement with actions of Defendants in reviewing his  
3 grievance is not actionable under § 1983. *Id.*

4 Plaintiff may not assert a due process claim arising solely from processing and  
5 denial of his grievance.  
6

7 Similarly, Plaintiff has no individualized right to enforce Title 15 regulations. See  
8 *Chappell v. Perrez*, 2011 WL 2296816, \*2 (E.D. Cal. June 8, 2011); *Vasquez v. Tate*,  
9 2012 WL 6738167, at \*9 (E.D. Cal. December 28, 2012). Plaintiff does not cite authority  
10 showing an independent right of action for violation of Title 15.

11 Plaintiff may not base a federal claim solely on denial of his grievance and  
12 alleged violation of Title 15 regulations.  
13

#### 14 **F. State Claims**

##### 15 1. California Constitution

16 There is no private right of action for damages for violation of California  
17 Constitution section 7 (due process), see *Katzberg v. Regents of the University of*  
18 *California*, 29 Cal.4th 300, 329 (2002); *Davis v. Kissinger*, No. CIV S-04-0878 GEB  
19 DAD P, 2009 WL 256574, \*12 n.4 (E.D. Cal. Feb.3, 2009), and section 8 (equal  
20 protection), see *Javor v. Taggart*, 98 Cal.App.4th 795, 807 (2002) ("It is beyond  
21 question that a plaintiff is not entitled to damages for a violation of the due process  
22 clause or the equal protection clause of the state Constitution.").<sup>2</sup>  
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25 <sup>2</sup> In *Degrassi v. Cook*, 29 Cal.4th 333, 343-44 (2002), the California Supreme Court examined whether an  
26 individual could bring an action for money damages on the basis of an alleged violation of a provision of  
27 the California Constitution, in the absence of a statutory provision or an established common law tort  
28 authorizing such a damage remedy for the constitutional violation. The California Supreme Court held that  
an action for damages was not available.



1 Accordingly, the above discussion of Plaintiff's federal due process and equal  
2 protection claims resolves these constitutional claims also at the state level. *Los*  
3 *Angeles County Bar Assoc. v. Eu*, 979 F.2d 697, 705 (9th Cir. 1992), citing *Payne v.*  
4 *Superior Court*, 17 Cal.3d 908, 914 n.3 (1976) (the California Constitution provides the  
5 same basic guarantee as the Fourteenth Amendment of the United States Constitution).  
6

## 7 2. Negligence

8 A public employee is liable for injury to a prisoner “proximately caused by his  
9 negligent or wrongful act or omission.” Cal. Gov’t Code § 844.6(d). “In order to establish  
10 negligence under California law, a plaintiff must establish four required elements: (1)  
11 duty; (2) breach; (3) causation; and (4) damages.” *Ileto v. Glock Inc.*, 349 F.3d 1191,  
12 1203 (9th Cir. 2003).  
13

14 Plaintiff claims Defendants harmed him by negligent breach of state law duties.  
15 However, as stated above, Plaintiff does not demonstrate any state law duty to assign  
16 Plaintiff to PIA employment. Mere conclusory statements attributing liability cannot  
17 support a cognizable claim. *Iqbal*, 129 S.Ct. at 1949; see *Taylor v. United States*, 821  
18 F.2d 1428, 1433 (9th Cir.1987) (federal pleading rules apply to state law claims in  
19 supplemental jurisdiction).  
20

## 21 **G. Supplemental State Law Jurisdiction**

22 Even if Plaintiff had alleged a viable state law claim, the Court will not exercise  
23 supplemental jurisdiction over any state law claim absent a cognizable federal claim. 28  
24 U.S.C. § 1367(a); *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805  
25 (9th Cir. 2001); see also *Gini v. Las Vegas Metropolitan Police Dep’t*, 40 F.3d 1041,  
26 1046 (9th Cir. 1994). “When . . . the court dismisses the federal claim leaving only state  
27 claims for resolution, the court should decline jurisdiction over the state claims and  
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1 dismiss them without prejudice.” *Les Shockley Racing v. National Hot Rod Ass'n*, 884  
2 F.2d 504, 509 (9th Cir. 1989).

3 **V. CONCLUSIONS AND ORDER**

4 The Complaint fails to state any cognizable claim. The Court will provide Plaintiff  
5 with an opportunity to file an amended complaint curing the deficiencies identified by the  
6 Court in this Order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

7 If Plaintiff opts to amend, his amended complaint should be brief, Fed. R. Civ. P.  
8 8(a), but must state what each named Defendant did that led to the deprivation of  
9 Plaintiff's constitutional or other federal rights, *Iqbal*, 556 U.S. at 677-78, consistent with  
10 this Order. Although accepted as true, the “[f]actual allegations must be [sufficient] to  
11 raise a right to relief above the speculative level . . . .” *Twombly*, 550 U.S. at 555.  
12 Further, Plaintiff may not change the nature of this suit by adding new, unrelated claims  
13 in his amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

14 Finally, an amended complaint supersedes the original complaint, *Forsyth v.*  
15 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567  
16 (9th Cir. 1987), and must be “complete in itself without reference to the prior or  
17 superseded pleading.” Local Rule 220.

18 Based on the foregoing, it is HEREBY ORDERED that:

- 19
- 20 1. The Clerk's Office shall send Plaintiff (1) a blank civil rights amended  
21 complaint form and (2) a copy of his Complaint removed to this Court on  
22 July 19, 2011 (ECF No. 1, Ex. A),
  - 23 2. Plaintiff's Complaint (ECF No. 1, Ex. A) is DISMISSED for failure to state a  
24 claim upon which relief may be granted,
  - 25 3. Plaintiff shall file an amended complaint within thirty (30) days from  
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1 service of this Order, and

2 4. If Plaintiff fails to file an amended complaint in compliance with this Order,  
3 the undersigned will recommend the action be dismissed.  
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6 IT IS SO ORDERED.

7 Dated: September 29, 2014

8 /s/ Michael J. Seng  
9 UNITED STATES MAGISTRATE JUDGE  
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