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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CURTIS EDWARD BYRD,

Plaintiff,

v.

SANDRA PENNYWELL, et al.,

Defendants.

Case No. 1:14-cv-00832 DLB PC

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

THIRTY-DAY DEADLINE

Plaintiff Curtis Edward Byrd (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on June 2, 2014.¹ He names Warden Sandra Pennywell, Governor Jerry Brown, the Deputy Governor, the Chief Appeals Officer, the Lieutenant or Sergeant of the mailroom, the Appeals Officer of the Institution, the Captain of the Institution, the State of California, the Department of Corrections, and the Institution as Defendants.

A. SCREENING REQUIREMENT

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

¹ On June 18, 2014, Plaintiff consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c).

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

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

13 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other
14 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092
15 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.
16 Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions or
17 omissions of each named defendant to a violation of his rights; there is no respondeat superior
18 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d
19 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);
20 Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a plausible claim
21 for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).
22 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S.
23 at 678; Moss, 572 F.3d at 969.

24 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

25 Plaintiff is currently housed at Calipatria State Prison in Calipatria, California. He was
26 housed at Kern Valley State Prison in Delano, California, when the events giving rise to this action
27 took place.

28 Plaintiff alleges the following. Plaintiff claims that his legal mail in the institution was

1 delayed with respect to his appeal which forced him and his attorney to seek an extension of time to
2 file his Wende brief. Plaintiff claims each Defendant is involved because of their official positions.

3 Plaintiff is seeking damages in the amount of \$1,000,000,800,000. He is further seeking the
4 imposition of a federal law that would provide service notification of all incoming legal mail.

5 **C. DISCUSSION**

6 1. Access to the Courts

7 Plaintiff has a constitutional right of access to the courts and prison officials may not actively
8 interfere with his right to litigate. Silva v. Di Vittorio, 658 F.3d 1090, 1101-02 (9th Cir. 2011).
9 However, to state a viable claim for relief, Plaintiff must allege he suffered an actual injury, which is
10 “actual prejudice with respect to contemplated or existing litigation.” Nevada Dep’t of Corr. v.
11 Greene, 648 F.3d 1014, 1018 (9th Cir. 2011) (citing Lewis v. Casey, 518 U.S. 343, 348, 116 S.Ct.
12 2174 (1996)) (quotation marks omitted), *cert. denied*, 132 S.Ct. 1823 (2012).

13 Here, Plaintiff makes no showing that he suffered an actual injury. “[T]he injury requirement
14 is not satisfied by just any type of frustrated legal claim.” Lewis, 518 U.S. at 354. To bring a claim,
15 the plaintiff must have suffered an actual injury by being shut out of court. Christopher v. Harbury,
16 536 U.S. 403, 415, 122 S.Ct. 2179, 2185-87 (2002); Lewis, 518 U.S. at 351. Plaintiff states he was
17 forced to seek an extension of time to file a Wende brief. He makes no showing that he was actually
18 shut out of court or prejudiced in any manner.

19 Accordingly, Plaintiff fails to state a claim of interference with his access to the courts.

20 2. Interference with Mail

21 While prisoners have a First Amendment right to send and receive mail, Witherow v. Paff, 52
22 F.3d 264, 265 (9th Cir. 1995) (quotation marks omitted), the right to receive mail is subject to
23 substantial limitation and a regulation or policy infringing on the right will be upheld if it is
24 reasonably related to legitimate penological interests, Prison Legal News v. Lehman, 397 F.3d 692,
25 699 (9th Cir. 2005) (citing Turner v. Safley, 482 U.S. 78, 89, 107 S.Ct. 2254 (1987)). Censorship of
26 outgoing prisoner mail, on the other hand, is justified if the following criteria are met: (1) the
27 regulation furthers an important or substantial government interest unrelated to the suppression of
28 expression, and (2) the limitation on First Amendment freedoms must be no greater than is necessary

1 or essential to the protection of the particular governmental interest involved. Proconier v. Martinez,
2 416 U.S. 396, 413, 94 S.Ct. 1800 (1974) (overturned by Thornburgh v. Abbott, 490 U.S. 401, 413-
3 14, 109 S.Ct. 1874 (1989) only as test relates to incoming mail - Turner test applies to incoming
4 mail) (quotation marks omitted); Barrett v. Belleque, 544 F.3d 1060, 1062 (9th Cir. 2008) (Proconier
5 applies to censorship of outgoing mail).

6 Here, Plaintiff makes no showing that any Defendant interfered with his mail. Moreover, the
7 complaint involves one incident of delayed mail. Isolated incidents of mail interference or
8 tampering will not support a claim under section 1983 for violation of plaintiff's constitutional
9 rights. See Davis v. Goord, 320 F.3d 346, 351 (2d. Cir. 2003); Gardner v. Howard, 109 F.3d 427,
10 431 (8th Cir. 1997); Smith v. Maschner, 899 F.2d 940, 944 (10th Cir. 1990).

11 Accordingly, Plaintiff fails to state a claim of interference with mail.

12 3. Supervisor Liability

13 Supervisory personnel may not be held liable under section 1983 for the actions of
14 subordinate employees based on *respondeat superior*, or vicarious liability. Crowley v. Bannister,
15 734 F.3d 967, 977 (9th Cir. 2013); accord Lemire v. California Dep't of Corr. and Rehab., 726 F.3d
16 1062, 1074-75 (9th Cir. 2013); Lacey v. Maricopa County, 693 F.3d 896, 915-16 (9th Cir. 2012) (en
17 banc). "A supervisor may be liable only if (1) he or she is personally involved in the constitutional
18 deprivation, or (2) there is a sufficient causal connection between the supervisor's wrongful conduct
19 and the constitutional violation." Crowley, 734 F.3d at 977 (citing Snow, 681 F.3d at 989) (internal
20 quotation marks omitted); accord Lemire, 726 F.3d at 1074-75; Lacey, 693 F.3d at 915-16. "Under
21 the latter theory, supervisory liability exists even without overt personal participation in the
22 offensive act if supervisory officials implement a policy so deficient that the policy itself is a
23 repudiation of constitutional rights and is the moving force of a constitutional violation." Crowley,
24 734 F.3d at 977 (citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)) (internal quotation
25 marks omitted).

26 Here, Plaintiff names Warden Sandra Pennywell, Governor Jerry Brown, the Deputy
27 Governor, the Chief Appeals Officer, the Lieutenant or Sergeant of the mailroom, the Appeals
28 Officer of the Institution, and the Captain of the Institution as Defendants, solely on the basis of their

1 positions as supervisors. Plaintiff makes no showing that any Defendant was personally involved in
2 delaying his mail. Therefore, Plaintiff fails to state a claim against the above-named Defendants.

3 4. Eleventh Amendment Immunity

4 Plaintiff names the State of California, the California Department of Corrections and
5 Rehabilitation (“CDCR”), and Kern Valley State Prison (“KVSP”) as Defendants. However, the
6 Eleventh Amendment erects a general bar against federal lawsuits brought against the state.
7 Wolfson v. Brammer, 616 F.3d 1045, 1065-66 (9th Cir. 2010) (citation and quotation marks
8 omitted). While “[t]he Eleventh Amendment does not bar suits against a state official for
9 prospective relief,” Wolfson, 616 F.3d at 1065-66, suits against the state or its agencies are barred
10 absolutely, regardless of the form of relief sought, e.g., Pennhurst State School & Hosp. v.
11 Halderman, 465 U.S. 89, 100, 104 S.Ct. 900 (1984); Buckwalter v. Nevada Bd. of Medical
12 Examiners, 678 F.3d 737, 740 n.1 (9th Cir. 2012). Thus, Plaintiff may not maintain a claim against
13 the State of California, CDCR, or KVSP.

14 **D. CONCLUSION AND ORDER**

15 Plaintiff’s complaint fails to state a claim upon which relief may be granted under section
16 1983. The Court will provide Plaintiff with an opportunity to file an amended complaint. Akhtar v.
17 Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

18 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
19 each named Defendant did that led to the deprivation of Plaintiff’s federal rights and liability may
20 not be imposed on supervisory personnel under the theory of mere *respondeat superior*, Iqbal, 556
21 U.S. at 676-77; Starr v. Baca, 652 F.3d 1202, 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101
22 (2012). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to
23 relief above the speculative level. . . .” Twombly, 550 U.S. at 555 (citations omitted).

24 Finally, an amended complaint supercedes the original complaint, Lacey v. Maricopa
25 County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be “complete in itself without
26 reference to the prior or superceded pleading,” Local Rule 220.

27 **ORDER**

28 Accordingly, it is HEREBY ORDERED that:

1 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim
2 under section 1983;

3 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;

4 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
5 amended complaint; and

6 4. If Plaintiff fails to file an amended complaint in compliance with this order, this
7 action will be dismissed, with prejudice, for failure to state a claim.
8

9 IT IS SO ORDERED.

10 Dated: June 4, 2015

/s/ Dennis L. Beck
11 UNITED STATES MAGISTRATE JUDGE
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