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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLAUDE CARR,

Plaintiff,

vs.

M. ALCALA, et al.,

Defendants

Case No. 1:14 cv 01823 LJO GSA PC

ORDER DISMISSING FIRST AMENDED
COMPLAINT AND GRANTING PLAINTIFF
LEAVE TO FILE A SECOND AMENDED
COMPLAINT

AMENDED COMPLAINT DUE
IN THIRTY DAYS

I. Screening Requirement

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(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. § 1915(e)(2)(B)(ii).

1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
3 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
4 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
5 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s
6 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the
7 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,
8 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not
9 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
10 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268
11 (9th Cir. 1982)).

12 **II. Plaintiff’s Claims**

13 This action proceeds on the December 17, 2014, first amended complaint. Plaintiff, an
14 inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR) at
15 CSP Corcoran, brings this civil rights action against defendant correctional officials employed by
16 the CDCR at CSP Corcoran. Plaintiff names as Defendants Mailroom Supervisor M. Alcalá;
17 Correctional Counselor J. Sasso; Associate Warden J. Collins. Plaintiff claims that he was
18 denied access to the courts in violation of the First Amendment and that Defendants subjected
19 him to an equal protection deprivation in violation of the Fourteenth Amendment.

20 Plaintiff alleges that on May 15, 2014, he mailed a civil rights complaint to the U.S.
21 District Court for the Central District of California. As of July 6, 2014, Plaintiff had not received
22 any confirmation that the complaint had been received or filed. On July 9, 2014, the court
23 confirmed that it had not received a complaint.

24 Plaintiff filed an inmate grievance, and was interviewed at the first level of review by
25 Defendant Alcalá. Although Alcalá denied Plaintiff’s appeal, he did agree that Plaintiff did place
26 the complaint in the mail. Plaintiff’s appeal was denied at the second level of review by
27 Defendant Sasso.

1 **A. Access to Courts**

2 Because states must ensure indigent prisoners meaningful access to the courts, prison
3 officials are required to provide either (1) adequate law libraries, or (2) adequate assistance from
4 persons trained in the law. Bounds v. Smith, 430 U.S. 817, 828 (1977). Under prior law,
5 Bounds was treated as establishing “core requirements,” such that a prisoner alleging deprivation
6 of the Bounds minima need not allege actual injury to a state constitutional claim. Sands v.
7 Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989). Recent Supreme Court precedent abolishes such
8 approach, however, providing that all inmate claims for interference with access to the court
9 include “actual injury” as an element. Casey v. Lewis, 518 U.S. 343 (1996).

10 To establish a Bounds violation, prisoner must show that his prison’s law library or legal
11 assistance program frustrated or impeded his ability to pursue a nonfrivolous legal claim. Casey,
12 supra, 518 U.S. 343, 347. The right of access does not require the State to “enable the prisoner
13 to discover grievances” or to “litigate effectively once in court.” The Casey court further limits
14 the right of access to the courts, as follows:

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16 Finally, we must observe that the injury requirement is not
17 satisfied by just any type of frustrated legal claim . . . Bounds does
18 not guarantee inmates the wherewithal to transform themselves
19 into litigating engines capable of filing everything from
20 shareholder derivative actions to slip-and-fall claims. The tools it
21 requires to be provided are those that the inmates need in order to
22 attack their sentences, directly or collaterally, and in order to
23 challenge the conditions of their confinement. Impairment of any
24 other litigating capacity is simply one of the incidental (and
25 perfectly constitutional) consequences of conviction and
26 incarceration.

27 Casey, 518 U.S. at 346.

28 Liberally construed, Plaintiff has alleged facts indicating that he suffered actual injury –
the facts alleged indicate that Plaintiff was prevented from filing a civil rights complaint
regarding the conditions of Plaintiff’s confinement. Plaintiff has not, however, alleged any facts
suggesting that Alcala or any of the Defendants were responsible for the complaint not reaching

1 the court. Under section 1983, Plaintiff must link the named defendants to the participation in
2 the violation at issue. Ashcroft v. Iqbal, 556 U.S. 662, 676-77 (2009); Simmons v. Navajo
3 County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010). Liability may not be imposed under a
4 theory of respondeat superior, and there must exist some causal connection between the conduct
5 of each named defendant and the violation at issue. Iqbal, 556 U.S. at 676-77; Lemire v.
6 California Dep't of Corr. and Rehab., 726 F.3d 1062, 1074-75 (9th Cir. 2013); Starr v. Baca, 652
7 F.3d 1202, 1205-08 (9th Cir. 2011), cert. denied, 132 S.Ct. 2101 (2012). Plaintiff may not,
8 therefore, hold Defendant Alcala liable simply because he is the mailroom supervisor.

9 **B. Equal Protection**

10 The Equal Protection Clause requires that persons who are similarly situated be treated
11 alike. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985); Shakur v.
12 Schiriro, 514 F.3d 878, 891 (9th Cir. 2008). A plaintiff may establish an equal protection claim
13 by showing that the plaintiff was intentionally discriminated against on the basis of plaintiff's
14 membership in a protected class. Comm. Concerning Cmty. Improvement v. City of Modesto,
15 583 F.3d 960, 702-03 (9th Cir. 2009); Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003), or
16 that similarly situated individuals were intentionally treated differently without a rational
17 relationship to a legitimate state purpose, Engquist v. Oregon Dept. of Agr., 553 U.S. 591, 601-
18 02 (2008); Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Lazy Y Ranch Ltd. v.
19 Behrens, 546 F.3d 580, 592 (9th Cir. 2008); North Pacifica LLC v. City of Pacifica, 526 F.3d 478,
20 486 (9th Cir. 2008).

21 Plaintiff has not alleged any facts suggesting that he was intentionally discriminated
22 against based upon his membership in a protected class or that similarly situated individuals were
23 intentionally treated differently without a rational relationship to a legitimate state purpose. This
24 claim should therefore be dismissed.

25 **C. Grievance Process**

26 The only conduct charged to Defendants is their participation in the inmate grievance
27 process. There is no liberty interest in a prison grievance procedure as it is a procedural right
28

1 only. Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988); Buckley v. Barlow, 997 F.2d 494, 495
2 (8th Cir. 1993). The prison grievance procedure does not confer any substantive rights upon
3 inmates and actions in reviewing appeals cannot serve as a basis for liability under section 1983.
4 Buckley, 997 F.2d at 495. Defendants cannot, therefore be held liable solely for denying
5 Plaintiff's grievance.

6 **III. Conclusion and Order**

7 The Court has screened Plaintiff's first amended complaint and finds that it does not
8 state any claims upon which relief may be granted under section 1983. The Court will provide
9 Plaintiff with the opportunity to file an amended complaint curing the deficiencies identified by
10 the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is
11 cautioned that he may not change the nature of this suit by adding new, unrelated claims in his
12 amended complaint. George, 507 F.3d at 607 (no "buckshot" complaints).

13 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to
14 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where
15 that defendant is employed and in what capacity, and explain how that defendant acted under
16 color of state law. Plaintiff should state clearly, in his own words, what happened. Plaintiff
17 must describe what each defendant, *by name*, did to violate the particular right described by
18 Plaintiff.

19 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
20 each named defendant did that led to the deprivation of Plaintiff's constitutional or other federal
21 rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the "[f]actual allegations must
22 be [sufficient] to raise a right to relief above the speculative level" Bell Atlantic Corp. v.
23 Twombly, 550 U.S. 544, 554 (2007) (citations omitted).

24 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
25 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
26 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded
27 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an

1 original complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d
2 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
3 Forsyth, 114 F.3d at 1474.

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

- 5 1. Plaintiff’s first amended complaint is dismissed, with leave to amend, for failure
6 to state a claim;
- 7 2. The Clerk’s Office shall send to Plaintiff a complaint form;
- 8 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a
9 second amended complaint;
- 10 4. Plaintiff may not add any new, unrelated claims to this action via his amended
11 complaint and any attempt to do so will result in an order striking the amended
12 complaint; and
- 13 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
14 action be dismissed, with prejudice, for failure to state a claim.

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16
17 IT IS SO ORDERED.

18 Dated: February 18, 2015

19 /s/ Gary S. Austin

20 UNITED STATES MAGISTRATE JUDGE