

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

CHARLES ALBERT NEELY,

Plaintiff,

v.

J. W. MOSS, et al.,

Defendants.

Case No. 1:15-cv-00195-SAB-PC

ORDER DISMISSING COMPLAINT, WITH  
LEAVE TO AMEND, FOR FAILURE TO  
STATE A COGNIZABLE CLAIM FOR  
RELIEF

THIRTY-DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302. Currently before the Court is Plaintiff's complaint, filed January 22, 2015.

**I.**

**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 "frivolous or malicious," that "fail to state a claim on which relief may be granted," or that "seek monetary relief against a defendant who is immune from such relief." 28 U.S.C. §

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

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, 556 U.S. 662, 678 (2009)(citing Bell  
6 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate  
7 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.  
8 Williams, 297 F.3d 930, 934 (9th Cir.2002).

9 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings  
10 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d  
11 1113, 1121 (9th Cir. 2012)(citations omitted). To survive screening, Plaintiff’s claims must be  
12 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer  
13 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss  
14 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant  
15 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s  
16 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572  
17 F.3d at 969.

## 18 II.

### 19 COMPLAINT ALLEGATIONS

20 Plaintiff, an inmate in the custody of the California Department of Corrections and  
21 Rehabilitation (CDCR) at the Golden State Modified Community Correctional Facility in  
22 McFarland, brings this action against correctional officials employed by the CDCR. The events  
23 at issue occurred while Plaintiff was housed at the Taft Modified Community Correctional  
24 Facility (TMCCF). Plaintiff names the following Defendants: Acting TMCCF Warden J. Moss;  
25 Appeals Examiner D. Artis; Chief, Office of Appeals R. Briggs. Plaintiff’s allegations stem  
26 from a disciplinary process at TMCCF.

27 While housed at TMCCF, Plaintiff was charged with a Rules Violation Report CDCR  
28 Form 115 (RVR), with a failure to follow orders. Plaintiff was found guilty of the RVR at a

1 disciplinary hearing, and was assessed a loss of behavioral credits. The sole claim in this lawsuit  
2 is that the guilty finding is unsubstantiated. Plaintiff alleges that he was unable to obtain video  
3 footage that would exonerate him of the guilty finding. Plaintiff seeks to have the RVR  
4 dismissed and all of his behavioral credits restored.

### 5 **III.**

## 6 **DISCUSSION**

### 7 **A. Disciplinary Hearing**

8 It has long been established that state prisoners cannot challenge the fact or duration of  
9 their confinement in a section 1983 action and their sole remedy lies in habeas corpus relief.  
10 Wilkinson v. Dotson, 544 U.S. 74, 78 (2005). Often referred to as the favorable termination rule  
11 or the Heck bar, this exception to section 1983's otherwise broad scope applies whenever state  
12 prisoners "seek to invalidate the duration of their confinement-either directly through an  
13 injunction compelling speedier release or indirectly through a judicial determination that  
14 necessarily implies the unlawfulness of the State's custody." Wilkinson, 544 U.S. at 81; Heck v.  
15 Humphrey, 512 U.S. 477, 482, 486-487 (1994); Edwards v. Balisok, 520 U.S. 641, 644 (1997).  
16 Thus, "a state prisoner's [section] 1983 action is barred (absent prior invalidation)-no matter the  
17 relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state  
18 conduct leading to conviction or internal prison proceedings)-if success in that action would  
19 necessarily demonstrate the invalidity of confinement or its duration." Id. at 81-82. Plaintiff  
20 has not alleged that his disciplinary conviction has been reversed, expunged or otherwise  
21 invalidated. This claim should therefore be dismissed.

### 22 **B. Supervisory Liability**

23 Plaintiff names as a Defendant Acting Warden J. Moss. Government officials may not be  
24 held liable for the actions of their subordinates under a theory of respondeat superior. Ashcroft  
25 v. Iqbal, 556 U.S. 662, 673 (2009). Since a government official cannot be held liable under a  
26 theory of vicarious liability for section 1983 actions, Plaintiff must plead facts indicating that  
27 Defendant Moss violated the Constitution through his own individual actions. Id. at 673. In  
28 other words, to state claim for relief under section 1983, Plaintiff must allege facts indicating that

1 Defendant Moss engaged in some affirmative act or omission that demonstrates a violation of  
2 Plaintiff's federal rights. Plaintiff has failed to do so here. Defendant Moss should therefore be  
3 dismissed.

#### 4 IV.

#### 5 CONCLUSION AND ORDER

6 For the reasons stated, Plaintiff's complaint fails to state a claim upon which relief may  
7 be granted. Plaintiff is granted leave to file an amended complaint within thirty (30) days. Noll  
8 v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this  
9 suit by adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605,  
10 607 (7th Cir. 2007)(no "buckshot" complaints).

11 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what  
12 each defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights.  
13 Iqbal, 556 U.S. 662, 678. "The inquiry into causation must be individualized and focus on the  
14 duties and responsibilities of each individual defendant whose acts or omissions are alleged to  
15 have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988).  
16 Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief  
17 above the speculative level. . . ." Twombly, 550 U.S. at 555 (citations omitted).

18 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana,  
19 Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987),  
20 and must be "complete in and of itself without reference to the prior or superseded pleading,"  
21 Local Rule 220. "All causes of action alleged in an original complaint which are not alleged in  
22 an amended complaint are waived." King, 814 F.2d at 567 (citing to London v. Coopers  
23 Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

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

- 25 1. The Clerk's Office shall send to Plaintiff a civil rights complaint form;
- 26 2. Plaintiff's complaint, filed January 22, 2015, is dismissed for failure to state a  
27 claim;
- 28 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a

1 an amended complaint; and

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

4  
5 IT IS SO ORDERED.

6 Dated: **December 17, 2015**

  
UNITED STATES MAGISTRATE JUDGE