



1 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.  
2 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).  
3 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief  
4 that is plausible on its face.” Id. Facial plausibility demands more than the mere  
5 possibility that a defendant committed misconduct and, while factual allegations are  
6 accepted as true, legal conclusions are not. Id. at 677-78.

### 7 **III. PLAINTIFF’S ALLEGATIONS**

8 Plaintiff’s allegations can be summarized essentially as follows: While Plaintiff  
9 was housed at the Madera County Department of Corrections<sup>1</sup>, he could not receive and  
10 was unable to send mail from Friday, December 20, 2013, to Monday, December 23,  
11 2013. Plaintiff brings suit against Defendant Madera County Department of Corrections  
12 for infliction of emotional distress and for violation of his Eighth Amendment right to be  
13 free from cruel and unusual punishment.

### 14 **IV. ANALYSIS**

15 To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the  
16 conduct about which he complains was committed by a person acting under the color of  
17 state law and (2) the conduct deprived him of a federal constitutional or statutory right.  
18 Wood v. Outlander, 879 F.2d 583, 587 (9th Cir. 1989). Negligence is not sufficient to  
19 state a claim under § 1983. Daniels v. Williams, 474 U.S. 327, 330-31 (1986). In  
20 addition, a plaintiff must allege that he suffered a specific injury as a result of the conduct  
21 of a particular defendant and he must allege an affirmative link between the injury and  
22 the conduct of that defendant. Rizzo v. Goode, 423 U.S. 362, 371–72, 377 (1976).

#### 23 **A. Eighth Amendment – Cruel and Unusual Punishment**

24 In order to state a claim for violation of the Eighth Amendment, a plaintiff must  
25 “objectively show that he was deprived of something ‘sufficiently serious,’” and “make a  
26 subjective showing that the deprivation occurred with deliberate indifference to the  
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28 <sup>1</sup> Plaintiff’s address on record indicates that he is no longer in custody.

1 inmate's health or safety." Foster v. Runnels, 554 F.3d 807, 812 (9th Cir. 2009) (citing  
2 Farmer v. Brennan, 511 U.S. 825, 834 (1994)). In order to satisfy the first prong of the  
3 test, the matters about which the plaintiff is complaining must rise to the level of either  
4 "the wanton and unnecessary infliction of pain" or the deprivation of "the minimal civilized  
5 measure of life's necessities." See Rhodes v. Chapman, 452 U.S. 337, 347 (1981); see  
6 also Farmer, 511 U.S. at 832 (Prison officials "must ensure that inmates receive  
7 adequate food, clothing, shelter, medical care, and must take reasonable measures to  
8 guarantee the safety of the inmates.") (internal quotation marks and citation omitted).

9 The unnecessary and wanton infliction of pain constitutes cruel and unusual  
10 punishment prohibited by the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 319  
11 (1986); Ingraham v. Wright, 430 U.S. 651, 670 (1977); Estelle v. Gamble, 429 U.S. 97,  
12 105-06 (1976). In order to prevail on a claim of cruel and unusual punishment, a prisoner  
13 must allege and prove that objectively he suffered a sufficiently serious deprivation and  
14 that subjectively prison officials acted with deliberate indifference in allowing or causing  
15 the deprivation to occur. Wilson v. Seiter, 501 U.S. 294, 298-99 (1991).

16 Here, Plaintiff's claims simply do not rise to the level of an Eighth Amendment  
17 violation. He alleges only that his incoming and outgoing mail was interfered with over  
18 one weekend. There is no suggestion that this temporary deprivation constituted any  
19 measureable deprivation, much less a serious one or that it was done with deliberate  
20 indifference. Lastly, Plaintiff fails to link the Defendant to any deprivation. Plaintiff thus  
21 fails to state a claim under the Eighth Amendment.

22 **B. First Amendment – Send and Receive Mail**

23 Though Plaintiff does not allege that his First Amendment rights were violated, the  
24 complaint can be construed as asserting such a violation. Generally, prisoners have "a  
25 First Amendment right to send and receive mail." Witherow v. Paff, 52 F.3d 264, 265 (9th  
26 Cir. 1995) (per curiam). However, isolated incidents of mail interference or tampering will  
27 not support a claim under section 1983 for violation of plaintiff's constitutional rights. See  
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1 Davis v. Goord, 320 F.3d 346, 351 (2d Cir. 2003); Gardner v. Howard, 109 F.3d 427,  
2 431 (8th Cir. 1997); Smith v. Maschner, 899 F.2d 940, 944 (10th Cir. 1990). See also  
3 Crofton v. Roe, 170 F.3d 957, 961 (9th Cir. 1999) (temporary delay or isolated incident of  
4 delay in mail processing does not violate prisoner's First Amendment rights).

5 In order to state a First Amendment claim of mail interference under Section  
6 1983, Plaintiff must allege specific facts showing that the delayed mail amounted to more  
7 than an isolated incident. Plaintiff has not done that here. Furthermore, Plaintiff has not  
8 alleged harm. There are no allegations that the temporary interference with his mail  
9 either constituted an ongoing practice of unjustified censorship or caused him to miss  
10 court deadlines or in any way prejudiced him. Also, he must link the Defendant to his  
11 allegations of wrongdoing. He must allege specific facts showing how the Defendant  
12 actually and proximately caused the deprivation of Plaintiff's rights. He has not done so.

13 **C. Infliction of Emotional Distress**

14 The elements of intentional infliction of emotional distress are: "(1) extreme and  
15 outrageous conduct by the defendant with the intention of causing, or reckless disregard  
16 of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or  
17 extreme emotional distress; (3) and actual and proximate causation of the emotional  
18 distress by the defendant's outrageous conduct." Cervantez v. J.C. Penney Co., 24 Cal.  
19 3d 579, 593 (1979). Conduct is outrageous if it is "so extreme as to exceed all bounds of  
20 that usually tolerated in a civilized community." Id. The distress inflicted must be "of such  
21 substantial quantity or enduring quality that no reasonable man in a civilized society  
22 should be expected to endure it." Fletcher v. W. Nat'l Life Ins. Co., 10 Cal. App. 3d 376,  
23 397 (1970) (citation omitted).

24 Plaintiff's cursory allegations do not state a claim for intentional infliction of  
25 emotional distress. Again, he alleges only that his mail was temporarily interfered with on  
26 one occasion. This does not amount to "extreme and outrageous conduct," and there is  
27 no allegation that Plaintiff was harmed, let alone harmed in such a way "that no  
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1 reasonable man in a civilized society should be expected to endure.” Accordingly, this  
2 claim must also be dismissed.

3 **V. CONCLUSION AND ORDER**

4 The Court will grant Plaintiff an opportunity to file an amended complaint. Noll v.  
5 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff opts to amend, he must  
6 address the deficiencies noted in this Screening Order. Iqbal, 556 U.S. at 677-78.  
7 Plaintiff must set forth “sufficient factual matter . . . to ‘state a claim that is plausible on its  
8 face.’” Id. at 678 (quoting Twombly, 550 U.S. at 555).

9 Plaintiff should note that although he has been given the opportunity to amend, it  
10 is not for the purposes of adding new claims. George, 507 F.3d at 607. Plaintiff should  
11 carefully read this Screening Order and focus his efforts on curing the deficiencies set  
12 forth above.

13 Finally, Plaintiff is advised that Local Rule 220 requires that an amended  
14 complaint be complete in itself without reference to any prior pleading. As a general rule,  
15 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d  
16 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no  
17 longer serves any function in the case. Therefore, in an amended complaint, as in an  
18 original complaint, each claim and the involvement of each defendant must be  
19 sufficiently alleged. The amended complaint should be clearly and boldly titled “First  
20 Amended Complaint,” refer to the appropriate case number, and be an original signed  
21 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.  
22 8(a). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a  
23 right to relief above the speculative level . . . .” Twombly, 550 U.S. at 555 (citations  
24 omitted).

