

1 Plaintiff alleges that his "trial books, evidence, etc." from another case (*Windham v.*
2 *Borden, et al.*, in the Central District) were "stolen" and that his "personal law books, case files,
3 copies, etc." have been withheld since "December 2014 & July/Aug. 2014" and that he "needs all
4 of it to properly respond/plead." (Doc. 1.) Plaintiff alleges that these actions violated his right of
5 access to the courts and to due process.

6 Plaintiff has not stated any cognizable claims, but may be able to correct the deficiencies
7 in his pleading so to state a cognizable claim. Thus, the Court provides him the pleading
8 standards and legal standards for his two delineated claims as well as leave to file a first amended
9 complaint.

10 **III. Pleading Requirements**

11 **A. Federal Rule of Civil Procedure 8(a)**

12 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited
13 exceptions," none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534
14 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain "a short and plain
15 statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. Pro. 8(a).
16 "Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and
17 the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512.

18 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a
19 cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556
20 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
21 Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim that is
22 plausible on its face.'" *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
23 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; *see also Moss v. U.S.*
24 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

25 While "plaintiffs [now] face a higher burden of pleadings facts . . . ," *Al-Kidd v. Ashcroft*,
26 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally
27 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
28 However, "the liberal pleading standard . . . applies only to a plaintiff's factual allegations," *Neitze*

1 v. *Williams*, 490 U.S. 319, 330 n.9 (1989), "a liberal interpretation of a civil rights complaint may
2 not supply essential elements of the claim that were not initially pled," *Bruns v. Nat'l Credit*
3 *Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266,
4 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences, *Doe I v. Wal-*
5 *Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
6 omitted). The "sheer possibility that a defendant has acted unlawfully" is not sufficient, and
7 "facts that are 'merely consistent with' a defendant's liability" fall short of satisfying the
8 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

9 If he chooses to file a first amended complaint, Plaintiff should make it as concise as
10 possible and **no more than 25 pages in length**. He is required only to state which of his
11 constitutional rights he feels were violated by each Defendant and the factual basis supporting the
12 claims.

13 **B. Linkage Requirement**

14 The Civil Rights Act provides:

15 Every person who, under color of [state law] . . . subjects, or causes
16 to be subjected, any citizen of the United States . . . to the
17 deprivation of any rights, privileges, or immunities secured by the
18 Constitution . . . shall be liable to the party injured in an action at
19 law, suit in equity, or other proper proceeding for redress.

20 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
21 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See*
22 *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362
23 (1976). The Ninth Circuit has held that "[a] person 'subjects' another to the deprivation of a
24 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
25 in another's affirmative acts or omits to perform an act which he is legally required to do that
26 causes the deprivation of which complaint is made." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
27 Cir. 1978). To state a claim for relief under section 1983, Plaintiff must link each named
28 defendant with some affirmative act or omission that demonstrates a violation of Plaintiff's
federal rights.

1 Plaintiff fails to link any of the named Defendants to his allegations. Plaintiff must clearly
2 state which Defendant(s) he feels are responsible for each violation of his constitutional rights
3 and their factual basis as his complaint must put each Defendant on notice of Plaintiff's claims
4 against him or her. *See Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004).

5 **C. Exhibits**

6 Plaintiff's Complaint indicates that some documentation of his underlying action *Windham*
7 *v. Borden, et al.*" is attached as an appendix, but no such is attachment was submitted. In any
8 event, the Court is not a repository for the parties' evidence. Originals, or copies of evidence (i.e.,
9 prison or medical records, witness affidavits, etc.) need not be submitted until the course of
10 litigation brings the evidence into question (for example, on a motion for summary judgment, at
11 trial, or when requested by the Court). If Plaintiff attaches exhibits to his amended complaint,
12 each exhibit must be specifically referenced. Fed. R. Civ. Pro. 10(c). For example, Plaintiff must
13 state "see Exhibit A" or something similar in order to direct the Court to the specific exhibit
14 Plaintiff is referencing. Further, if the exhibit consists of more than one page, Plaintiff must
15 reference the specific page of the exhibit (i.e. "See Exhibit A, page 3").

16 At this point, it is premature to submit evidence. Plaintiff is reminded that, for screening
17 purposes, the Court must assume that Plaintiff's factual allegations are true. It is unnecessary for
18 a plaintiff to submit exhibits in support of the allegations in a complaint. Thus, if Plaintiff
19 chooses to file a first amended complaint, he would do well to simply state the facts upon which
20 he alleges a Defendant has violated his constitutional rights and refrain from submitting exhibits.

21 **IV. Claims for Relief**

22 **A. Access to Courts**

23 Inmates have a fundamental constitutional right of access to the courts. *Lewis v. Casey*,
24 518 U.S. 343, 346 (1996). Claims for infringement of access to the courts may arise from the
25 frustration or hindrance of "a litigating opportunity yet to be gained" (forward-looking access
26 claim) or from the loss of a meritorious suit that cannot now be tried (backward-looking claim).
27 *Christopher v. Harbury*, 536 U.S. 403, 412-15 (2002). In either instance, "the injury requirement
28 is not satisfied by just any type of frustrated legal claim." *Lewis*, 518 U.S. at 354. Inmates do not

1 enjoy a constitutionally protected right “to transform themselves into litigating engines capable of
2 filing everything from shareholder derivative actions to slip-and-fall claims.” *Id.* at 355. Rather,
3 the type of legal claim protected is limited to direct criminal appeals, habeas petitions, and civil
4 rights actions such as those brought under section 1983 to vindicate basic constitutional rights.
5 *Id.* at 354 (quotations and citations omitted). “Impairment of any *other* litigating capacity is
6 simply one of the incidental (and perfectly constitutional) consequences of conviction and
7 incarceration.” *Id.* at 355 (emphasis in original).

8 To assert a forward-looking access claim, the non-frivolous “underlying cause of action
9 and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice
10 to a defendant.” *Christopher v. Harbury*, 536 U.S. 403, 416 (2002). To state such a claim, the
11 plaintiff must describe this “predicate claim . . . well enough to apply the ‘non-frivolous’ test and
12 to show that the ‘arguable’ nature of the underlying claim is more than hope.” *Id.* It is not
13 enough for Plaintiff merely to conclude that the claim was non-frivolous. Instead, the complaint
14 should “state the underlying claim in accordance with Federal Rule of Civil Procedure 8(a) just as
15 if it were being independently pursued, and a like plain statement should describe any remedy
16 available under the access claim and presently unique to it.” *Id.* at 417–418.

17 Moreover, when a prisoner asserts that he was denied access to the courts and seeks a
18 remedy for a lost opportunity to present a legal claim, he must show: (1) the loss of a non-
19 frivolous or arguable underlying claim; (2) the official acts that frustrated the litigation; and (3) a
20 remedy that may be awarded as recompense, but that is not otherwise available in a future suit.
21 *Phillips v. Hust*, 477 F.3d 1070, 1076 (9th Cir.2007) (citing *Christopher*, 536 U.S. at 413–414,
22 overruled on other grounds, *Hust v. Phillips*, 555 U.S. 1150, 129 S.Ct. 1036, 173 L.Ed.2d 466
23 (2009)).

24 Plaintiff’s allegations under this claim are too generic. The Court cannot determine the
25 type of action he pursued in *Windham v. Borden, et al.* and the result therein is likewise unknown.

26 **B. Due Process**

27 Plaintiff alleges that his legal property and evidence was stolen and that his law books,
28 case files, copies, and the like are still being withheld.

1 The Due Process Clause protects prisoners from being deprived of property without due
2 process of law, *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974), and prisoners have a protected
3 interest in their personal property, *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974). However,
4 while an authorized, intentional deprivation of property is actionable under the Due Process
5 Clause, *see Hudson v. Palmer*, 468 U.S. 517, 532, n.13 (1984) (citing *Logan v. Zimmerman Brush*
6 *Co.*, 455 U.S. 422 (1982)); *Quick v. Jones*, 754 F.2d 1521, 1524 (9th Cir. 1985), neither negligent
7 nor unauthorized intentional deprivations of property by a state employee “constitute a violation
8 of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a
9 meaningful postdeprivation remedy for the loss is available,” *Hudson v. Palmer*, 468 U.S. 517,
10 533 (1984).

11 An authorized, intentional deprivation of property is actionable under the Due Process
12 Clause, *see Hudson v. Palmer*, 468 U.S. 517, 532, n.13 (1984) (citing *Logan v. Zimmerman Brush*
13 *Co.*, 455 U.S. 422 (1982)); *Quick v. Jones*, 754 F.2d 1521, 1524 (9th Cir. 1985); is carried out
14 pursuant to established state procedures, regulations, or statutes, *Logan v. Zimmerman Brush Co.*,
15 455 U.S. at 436; *Piatt v. McDougall*, 773 F.2d 1032, 1036 (9th Cir. 1985); *see also Knudson v.*
16 *City of Ellensburg*, 832 F.2d 1142, 1149 (9th Cir. 1987); and is permissible if carried out pursuant
17 to a regulation that is reasonably related to a legitimate penological interest, *Turner v. Safley*, 482
18 U.S. 78, 89 (1987).

19 “An unauthorized intentional deprivation of property by a state employee does not
20 constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth
21 Amendment if a meaningful postdeprivation remedy for the loss is available.” *Hudson v. Palmer*,
22 468 U.S. 517, 533 (1984). Where, as here, Plaintiff alleges that his legal property was “stolen,”
23 California law provides a meaningful postdeprivation remedy such that Plaintiff’s claim would
24 not be cognizable.

25 Plaintiff has not alleged sufficient facts for the Court to determine whether the deprivation
26 was authorized or unauthorized. Plaintiff’s use of the word “stolen” is a mere conclusion without
27 factual support and does not demonstrate the taking of which he complains was unauthorized.
28 Further, Plaintiff has not alleged any facts suggesting that he was deprived of due process. As

1 long as Plaintiff was provided with appropriate process, prison officials may deprive him of his
2 property.

3 **C. California Tort Claims Act**

4 Under the California Tort Claims Act (“CTCA”), set forth in California Government Code
5 sections 810 et seq., a plaintiff may not bring a suit for monetary damages against a public
6 employee or entity unless the plaintiff first presented the claim to the California Victim
7 Compensation and Government Claims Board, and the Board acted on the claim, or the time for
8 doing so expired. “The Tort Claims Act requires that any civil complaint for money or damages
9 first be presented to and rejected by the pertinent public entity.” *Munoz v. California*, 33
10 Cal.App.4th 1767, 1776, 39 Cal.Rptr.2d 860 (1995).

11 The purpose of this requirement is “to provide the public entity sufficient information to
12 enable it to adequately investigate claims and to settle them, if appropriate, without the expense of
13 litigation.” *City of San Jose v. Superior Court*, 12 Cal.3d 447, 455, 115 Cal.Rptr. 797 (1974)
14 (citations omitted). Compliance with this “claim presentation requirement” constitutes an
15 element of a cause of action for damages against a public entity or official. *State v. Superior*
16 *Court (Bodde)*, 32 Cal.4th 1234, 1244, 13 Cal.Rptr.3d 534 (2004).

17 Federal courts likewise must require compliance with the CTCA for pendant state law
18 claims that seek damages against state public employees or entities. *Willis v. Reddin*, 418 F.2d
19 702, 704 (9th Cir.1969); *Mangold v. California Public Utilities Commission*, 67 F.3d 1470, 1477
20 (9th Cir.1995). State tort claims included in a federal action, filed pursuant to 42 U.S.C. § 1983,
21 may proceed only if the claims were first presented to the state in compliance with the CTCA.
22 *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627 (9th Cir.1988); *Butler v. Los*
23 *Angeles County*, 617 F.Supp.2d 994, 1001 (C.D.Cal.2008).

24 **D. Supervisory Liability**

25 It appears that Plaintiff may have named Warden Davey merely based on the supervisory
26 aspects of a warden's positions. However, supervisory personnel are generally not liable under
27 section 1983 for the actions of their employees under a theory of *respondeat superior* and,
28 therefore, when a named defendant holds a supervisory position, the causal link between him and

1 the claimed constitutional violation must be specifically alleged. *See Fayle v. Stapley*, 607 F.2d
2 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442
3 U.S. 941 (1979). To state a claim for relief under section 1983 based on a theory of supervisory
4 liability, Plaintiff must allege some facts that would support a claim that supervisory defendants
5 either: personally participated in the alleged deprivation of constitutional rights; knew of the
6 violations and failed to act to prevent them; or promulgated or "implemented a policy so deficient
7 that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the
8 constitutional violation.'" *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations
9 omitted); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Under section 1983, liability may
10 not be imposed on supervisory personnel for the actions of their employees under a theory of
11 *respondeat superior*. *Iqbal*, 556 U.S. at 677. "In a § 1983 suit or a *Bivens* action - where masters
12 do not answer for the torts of their servants - the term 'supervisory liability' is a misnomer." *Id.*
13 Knowledge and acquiescence of a subordinate's misconduct is insufficient to establish liability;
14 each government official is only liable for his or her own misconduct. *Id.*

15 "[B]are assertions . . . amount[ing] to nothing more than a "formulaic recitation of the
16 elements" of a constitutional discrimination claim,' for the purposes of ruling on a motion to
17 dismiss [and thus also for screening purposes], are not entitled to an assumption of truth." *Moss*,
18 572 F.3d at 969 (quoting *Iqbal*, 556 U.S. at 1951 (quoting *Twombly*, 550 U.S. at 555)). "Such
19 allegations are not to be discounted because they are 'unrealistic or nonsensical,' but rather
20 because they do nothing more than state a legal conclusion – even if that conclusion is cast in the
21 form of a factual allegation." *Id.*

22 Thus, any allegations that Warden Davey is because of the acts of those under his or her
23 supervision will not state a cognizable claim.

24 **IV. CONCLUSION**

25 For the reasons set forth above, Plaintiff's Complaint is **DISMISSED** with leave to file a
26 first amended complaint within thirty days. If Plaintiff needs an extension of time to comply with
27 this order, Plaintiff shall file a motion seeking an extension of time no later than thirty days from
28 the date of service of this order.

1 Plaintiff must demonstrate in any first amended complaint how the conditions complained
2 of have resulted in a deprivation of Plaintiff's constitutional rights. *See Ellis v. Cassidy*, 625 F.2d
3 227 (9th Cir. 1980). The first amended complaint must allege in specific terms how each named
4 defendant is involved. There can be no liability under section 1983 unless there is some
5 affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo*
6 *v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v.*
7 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

8 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and
9 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
10 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*
11 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
12 [sufficient] to raise a right to relief above the speculative level . . ." *Twombly*, 550 U.S. 127, 555
13 (2007) (citations omitted).

14 Plaintiff is further advised that an amended complaint supercedes the original, *Lacey v.*
15 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
16 2012) (en banc), and must be "complete in itself without reference to the prior or superceded
17 pleading," Local Rule 220.

18 The Court provides Plaintiff with **one, final** opportunity to amend to cure the deficiencies
19 identified by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987).
20 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his first
21 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot"
22 complaints).

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

- 24 1. Plaintiff's Complaint is **DISMISSED** with leave to amend;
- 25 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 26 3. **Within 30 days** Plaintiff must file a first amended complaint curing the
27 deficiencies identified by the Court in this order; and
- 28 4. If Plaintiff fails to comply with this order, this action will be dismissed for failure

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to obey a court order and for failure to state a claim.

IT IS SO ORDERED.

Dated: October 22, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE