

1 Amendment claim against Defendants Franklin and Ramos.¹ (ECF No. 11.) These
2 Defendants appeared on April 28, 2017, by filing a motion to dismiss. Plaintiff did not file
3 an opposition to the motion; instead, he lodged a First Amended Complaint. (ECF No.
4 31.) Defendants now move the Court to screen this new pleading. (ECF No. 33.)

5 **I. Screening Requirement**

6 The in forma pauperis statute provides, “Notwithstanding any filing fee, or any
7 portion thereof, that may have been paid, the court shall dismiss the case at any time if
8 the court determines that . . . the action or appeal . . . fails to state a claim upon which
9 relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

10 **II. Pleading Standard**

11 Section 1983 “provides a cause of action for the deprivation of any rights,
12 privileges, or immunities secured by the Constitution and laws of the United States.”
13 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
14 Section 1983 is not itself a source of substantive rights, but merely provides a method for
15 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
16 (1989).

17 To state a claim under § 1983, a plaintiff must allege two essential elements:
18 (1) that a right secured by the Constitution or laws of the United States was violated and
19 (2) that the alleged violation was committed by a person acting under the color of state
20 law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d
21 1243, 1245 (9th Cir. 1987).

22 A complaint must contain “a short and plain statement of the claim showing that
23 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
24 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported
25 by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678
26 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
27 forth “sufficient factual matter, accepted as true, to state a claim to relief that is plausible
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¹ This case was reassigned to the undersigned on September 8, 2016.

1 on its face.” Id. Facial plausibility demands more than the mere possibility that a
2 defendant committed misconduct and, while factual allegations are accepted as true,
3 legal conclusions are not. Id. at 677-78.

4 **III. Plaintiff’s Allegations**

5 At all times relevant to this action, Plaintiff was a state inmate housed at California
6 Substantive Abuse Treatment Facility (“CSATF”) in Corcoran, California. He names as
7 Defendants Mail Room Employee Ms. Franklin and Appeals Coordinator Mr. Ramos.

8 Plaintiff’s allegations may be fairly summarized as follows:

9 Plaintiff maintains a “correspondence approval” to communicate with his brother,
10 an inmate in the New York Department of Corrections. This approval is transferrable
11 among California Department of Corrections (“CDCR”) institutions, and it was in Plaintiff’s
12 Central File at CSATF as early as October 19, 2012.

13 On February 27, 2014, Plaintiff received a CDCR Form 1819² informing him that
14 he has received mail from his brother, but that the mail “was being disapproved due to
15 ‘no approval on file in the mail room.’” That same day, Plaintiff submitted a request for a
16 copy of his “correspondence approval” to be submitted to the mail room. The mailroom
17 was notified of this document on March 12, 2014.

18 On March 14, 2014, Plaintiff asked a CSATF staff member Zamora (not a party to
19 this action) about the status of his brother’s mail that had been previously “disapproved.”
20 Zamora contacted the mailroom and spoke to Defendant Franklin, who declined to
21 process the mail until she received the CDCR Form 1819 back from Plaintiff. Two days
22 later, on March 16, 2014, Plaintiff attached the CDCR Form 1819 to a CDCR Form 22³,
23 which was submitted to Defendant Franklin in an informal attempt to resolve the dispute.

24 On March 20, 2014, Plaintiff submitted an inmate grievance requesting the prompt
25 return of his mail. Defendant Ramos screened this appeal on April 2, 2014, asking for a
26 copy of the CDCR Form 1819 as supporting documentation. Plaintiff responded that this
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28 ² A CDCR Form 1819 is titled “Notification of Disapproval – Mail / Packages / Publication.”

³ A CDCR Form 22 is titled “Inmate / Parolee Request for Interview, Item or Service.”

1 form was unavailable to him because it was forwarded to Defendant Franklin. Defendant
2 Ramos then issued a second screening order asking for the CDCR Form 1819.

3 On April 11, 2014, Plaintiff received another CDCR Form 1819 noting that a
4 second piece of incoming mail from his brother was being disapproved because “no
5 approval on file in the mail room.”

6 Plaintiff seeks damages.

7 **IV. Discussion**

8 **A. First Amendment Claim**

9 Prisoners enjoy a First Amendment right to send and receive mail. Witherow v.
10 Paff, 52 F.3d 264, 265 (9th Cir. 1995) (citing Thornburgh v. Abbott, 490 U.S. 401, 407
11 (1989)). Prison officials have a responsibility to forward mail to inmates promptly. Bryan
12 v. Werner, 516 F.2d 233, 238 (3d Cir. 1975). However, a temporary delay or isolated
13 incident of delay or other mail interference without evidence of improper motive does not
14 violate a prisoner’s First Amendment rights. See Crofton v. Roe, 170 F.3d 957, 961 (9th
15 Cir. 1999). “Absent evidence of a broader plan or course of conduct to censor plaintiff’s
16 mail unconstitutionally, an honest error by prison officials does not justify relief under §
17 1983.” Watkins v. Curry, 2011 WL 5079532, at *3 (N.D. Cal. Oct. 25, 2011) (citing Lingo
18 v. Boone, 402 F. Supp. 768, 773 (C.D. Cal. 1975) (prisoner not entitled to monetary relief
19 under section 1983 where prison officials erroneously withheld a single piece of mail on
20 the grounds that it was inflammatory)); see also Smith v. Maschner, 899 F.2d 940, 944
21 (10th Cir. 1990) (defendants opened a single piece of legal mail by accident; “[s]uch an
22 isolated incident, without any evidence of improper motive or resulting interference with
23 [the plaintiff]’s right to counsel or to access to the courts, does not give rise to a
24 constitutional violation”); Bach v. Illinois, 504 F.2d 1100, 1102 (7th Cir. 1974) (one
25 incident of mail mishandling insufficient to show constitutional violation); cf. Antonelli v.
26 Sheahan, 81 F.3d 1422, 1431-32 (9th Cir. 1996) (plaintiff stated a claim where he alleged
27 not merely negligent, but deliberate, obstruction of his mail that resulted in mail delivery
28 being delayed for an inordinate amount of time).

1 Plaintiff's claim against Defendant Franklin is that she failed to promptly deliver a
2 piece of mail from Plaintiff's brother despite a "correspondence approval" allowing
3 Plaintiff to receive such mail. On the facts alleged, though, there is no constitutional
4 violation. Plaintiff learned that Defendant Franklin would return the mail upon receipt of
5 the CDCR Form 1819, which Plaintiff then forwarded to her. While it appears that
6 Defendant Franklin did not return the mail to Plaintiff, it is unclear if she received the
7 CDCR Form 1819. In addition, there are no facts to suggest that this Defendant intended
8 to intentionally interfere with or censor Plaintiff's mail. Without more, this claim fails as an
9 isolated incident.⁴

10 **B. Inmate Appeal Process**

11 Plaintiff complains about Defendant Ramos responses to Plaintiff's
12 administrative grievance. However, a defendant's actions in responding to an inmate
13 appeal, alone, cannot give rise to any claims for relief under section 1983 for violation of
14 due process. "[A prison] grievance procedure is a procedural right only, it does not confer
15 any substantive right upon the inmates." Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir.
16 1993) (citing Azeez v. DeRobertis, 568 F. Supp. 8, 10 (N.D. Ill. 1982)); see also Ramirez
17 v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in processing of appeals
18 because no entitlement to a specific grievance procedure); Massey v. Helman, 259 F.3d
19 641, 647 (7th Cir. 2001) (existence of grievance procedure confers no liberty interest on
20 prisoner); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). "Hence, it does not give
21 rise to a protected liberty interest requiring the procedural protections envisioned by the
22 Fourteenth Amendment." Azeez, 568 F. Supp. at 10. Actions in reviewing a prisoner's
23 administrative appeal, without more, are not actionable under section 1983. Buckley, 997
24 F.2d at 495.

25 Plaintiff alleges that Defendant Ramos improperly screened out his administrative
26 appeal. Without more, though, these allegations are insufficient to establish liability.

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28 ⁴ While Plaintiff did receive a second CDCR Form 1819 on April 11, 2014, he does not allege that Defendant Franklin authored this form.

1 Accordingly, this claim too must be dismissed.

2 **V. Conclusion**

3 Based on the foregoing, Plaintiff's First Amended Complaint fails to state a claim
4 and will therefore be dismissed. The Court will grant Plaintiff another opportunity to
5 amend his complaint. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff
6 should note that although he has been granted the opportunity to amend his complaint, it
7 is not for the purposes of adding new and unrelated claims. George v. Smith, 507 F.3d
8 605, 607 (7th Cir. 2007). Plaintiff should carefully review this screening order and focus
9 his efforts on curing the deficiencies set forth above.

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

21 Accordingly, it is HEREBY ORDERED that:

- 22 1. Defendants' April 28, 2017, Motion to Dismiss the Complaint (ECF No. 29)
23 is DENIED as moot;
- 24 2. The Clerk of Court is directed to lodge the First Amended Complaint (ECF
25 No. 31) nunc pro tunc;
- 26 3. Defendants' request for screening (ECF No. 33) is GRANTED;
- 27 4. Plaintiff's First Amended Complaint is dismissed with leave to amend for
28 failure to state a claim;

