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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

TONY TRAN,	)	1:15-cv-001591-BAM (PC)
	)	
Plaintiff,	)	SCREENING ORDER DISMISSING
	)	COMPLAINT WITH LEAVE TO AMEND
v.	)	
	)	(ECF No. 1)
DAVEY, D., CALIFORNIA STATE PRISON	)	
WARDEN,	)	
	)	<b>THIRTY (30) DAY DEADLINE</b>
Defendant.	)	
	)	
	)	

Plaintiff Tony Tran (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on October 19, 2015.

Plaintiff’s complaint, filed on October 19, 2015 (ECF No. 1), is currently before the Court for screening.

**I. Screening Requirement and Standard**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

1 A complaint must contain “a short and plain statement of the claim showing that the  
2 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
4 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,  
5 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65  
6 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge  
7 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)  
8 (internal quotation marks and citation omitted).

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. Hebbe v. Pliler, 627 F.3d 338,  
11 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially  
12 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each  
13 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949  
14 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.  
15 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere  
16 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678,  
17 129 S.Ct. at 1949 (quotation marks omitted); Moss, 572 F.3d at 969.

18 **II. Plaintiff’s Allegations**

19 Plaintiff is currently housed at Kern Valley State Prison. Plaintiff brings suit against D.  
20 Davey, Warden, Corcoran State Prison, where he was formerly housed and the events in the  
21 complaint took place.

22 Plaintiff alleges as follows: Defendant Davey is responsible for the operation of  
23 Corcoran State Prison and for the welfare of inmates. On October 19, 2013, Plaintiff received a  
24 letter from an attorney “indicating that he didn’t receive any copy of the case file.” Plaintiff  
25 contends this is a violation of his First Amendment right to petition the government for redress  
26 and 6<sup>th</sup> Amendment right to assistance of counsel. Plaintiff says that he checked his trust  
27 statement report and the mailing was paid for, but that the mailing of his legal mail was not  
28 recorded for mailing out.

1 Plaintiff then filed a grievance and alleges what occurred through the various levels of  
2 appeal. Plaintiff alleges that he lost various legal materials such as court transcripts, ballistic  
3 reports, and affidavits. Plaintiff alleges his attorney had to stop working on his habeas corpus.

4 Plaintiff seeks money damages and declaratory relief.

5 **III. Deficiencies in Complaint**

6 **A. Linkage Requirement**

7 The Civil Rights Act under which this action was filed provides:

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

11 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between  
12 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See  
13 Monell v. Dep't of Soc. Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978); Rizzo v.  
14 Goode, 423 U.S. 362, 96 S. Ct. 598, 46 L. Ed. 2d 561 (1976). The Ninth Circuit has held that  
15 “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of  
16 section 1983, if he does an affirmative act, participates in another’s affirmative acts, or omits to  
17 perform an act which he is legally required to do that causes the deprivation of which complaint  
18 is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

19 Plaintiff does not make any factual allegations concerning the defendant he has named in  
20 this action. Thus, Plaintiff has not linked the defendant to acts or omissions showing that each  
21 defendant participated in, or directed the violation of, any of his Constitutional rights. Plaintiff  
22 has attached about thirty (30) pages of exhibits to his complaint. The Court is not required to sift  
23 through Plaintiff’s exhibits and attachments in an effort to determine what Plaintiff’s claim(s)  
24 are. The Court will not use its already taxed resources to sort through documentation.

25 Plaintiff will be granted leave to amend his complaint. If Plaintiff elects to amend his  
26 complaint, he must allege what each individual defendant, by name, did or did not do that  
27 resulted in a violation of his constitutional rights. If he chooses to add attachments or exhibits to  
28

1 any amended complaint (which he is not required to do), Plaintiff must identify them for the  
2 Court and explain their significance, with particularity.

### 3 **B. Supervisory Liability**

4 Although Plaintiff has named Warden Davey as a defendant, Plaintiff has not alleged that  
5 Warden Davey was personally involved in an alleged Constitutional deprivation. To the extent  
6 Plaintiff seeks to hold Warden Davey, or any other defendant, liable based upon their  
7 supervisory positions, he may not do so. Liability may not be imposed on supervisory personnel  
8 for the actions or omissions of their subordinates under the theory of respondeat superior. Iqbal,  
9 556 U.S. at 676–77; Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020–21 (9th Cir.2010);  
10 Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir.2009); Jones v. Williams, 297 F.3d 930,  
11 934 (9th Cir.2002).

12 Supervisors may be held liable only if they “participated in or directed the violations, or  
13 knew of the violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045  
14 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205–06 (9th Cir. 2011); Corales v.  
15 Bennett, 567 F.3d 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any  
16 personal participation if the official implemented “a policy so deficient that the policy itself is a  
17 repudiation of the constitutional rights and is the moving force of the constitutional violation.”  
18 Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations  
19 marks omitted), abrogated on other grounds by Farmer v. Brennan, 511 U.S. 825 (1970).

### 20 **C. Grievance/Inmate Appeals Procedure**

21 Plaintiff appears to be complaining about the appeals process for the denial of his  
22 grievances and inmate appeals regarding the resolution of his grievance. Plaintiff cannot pursue  
23 any claims against prison officials or correctional staff based solely on their involvement in the  
24 administrative review of his inmate appeals.

25 The existence of an inmate appeals process does not create a protected liberty interest  
26 upon which Plaintiff may base a claim that he was denied a particular result or that the appeals  
27 process was deficient. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v. Adams,  
28 855 F.2d 639, 640 (9th Cir. 1988). To state a claim under section 1983, Plaintiff must

1 demonstrate personal involvement in the underlying violation of his rights, Iqbal, 556 U.S. at  
2 677; Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002), and liability may not be based merely  
3 on Plaintiff's dissatisfaction with the administrative process or a decision on an appeal, Ramirez,  
4 334 F.3d at 860; Mann, 855 F.2d at 640.

#### 5 **D. Mail**

6 Prisoners have “a First Amendment right to send and receive mail.” Witherow v. Paff, 52  
7 F.3d 264, 265 (9th Cir. 1995) (First Amendment not violated where prison's mail regulation  
8 related to a legitimate penological interest). Isolated incidents of mail interference or tampering  
9 will not support a claim under section 1983 for violation of plaintiff's constitutional rights. See  
10 Davis v. Goord, 320 F.3d 346, 351 (2d. Cir. 2003); Gardner v. Howard, 109 F.3d 427, 431 (8th  
11 Cir. 1997); Smith v. Maschner, 899 F.2d 940, 944 (10th Cir. 1990). also Crofton v. Roe, 170  
12 F.3d 957, 961 (9th Cir.1999) (temporary delay or isolated incident of delay of mail does not  
13 violate a prisoner's First Amendment rights). Aa temporary delay or isolated incident of delay or  
14 other mail interference without evidence of improper motive does not violate a prisoner's First  
15 Amendment rights. See Crofton v. Roe, 170 F.3d 957, 961 (9th Cir.1999).

16 Plaintiff has failed to allege who was responsible for the delays and/or withholding his  
17 mail.

#### 18 **E. Access to Courts**

19 Inmates have a fundamental right of access to the courts. Lewis v. Casey, 518 U.S. 343,  
20 346 (1996). The right is limited to direct criminal appeals, habeas petitions, and civil rights  
21 actions. *Id.* at 354. Claims for denial of access to the courts may arise from the frustration or  
22 hindrance of “a litigating opportunity yet to be gained” (forward-looking access claim) or from  
23 the loss of a meritorious suit that cannot now be tried (backward-looking claim). Christopher v.  
24 Harbury, 536 U.S. 403, 412-15 (2002). A plaintiff must show that he suffered an “actual injury”  
25 by being shut out of court. *Lewis*, 518 U.S. at 350-51. An “actual injury” is one that hinders the  
26 plaintiff's ability to pursue a legal claim. *Id.* at 351.

27 While Plaintiff alleges that he had a habeas corpus case, he does not allege whether he  
28 suffered any injury and who was responsible for that injury. Leave to amend will be granted.

1 **IV. Conclusion and Order**

2 For the above reasons, Plaintiff’s complaint fails state a claim upon which relief may be  
3 granted under section 1983. The Court will provide Plaintiff with an opportunity to amend his  
4 complaint to cure the identified deficiencies to the extent he is able to do so in good faith. Lopez  
5 v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

6 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what  
7 each named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal  
8 rights. Iqbal, 556 U.S. at 676. Plaintiff also must set forth “sufficient factual matter . . . to ‘state a  
9 claim that is plausible on its face.’” Id. at 678 (quoting Twombly, 550 U.S. at 555).

10 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated  
11 claims in his second amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no  
12 “buckshot” complaints).

13 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.  
14 Lacey, 693 F.3d at 927. Therefore, Plaintiff’s second amended complaint must be “complete in  
15 itself without reference to the prior or superseded pleading.” Local Rule 220.

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

- 17 1. The Clerk’s Office shall send Plaintiff a complaint form;
- 18 2. Plaintiff’s amended complaint, filed October 19, 2015 (ECF No. 1), is dismissed  
19 for failure to state a claim;
- 20 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a  
21 first amended complaint or a notice of voluntary dismissal; and
- 22 4. **If Plaintiff fails to file an amended complaint in compliance with this order,**  
23 **the Court will dismiss this action, with prejudice, for failure to state a claim and to obey a**  
24 **court order.**

25 IT IS SO ORDERED.

26 Dated: October 13, 2016

27 /s/ Barbara A. McAuliffe  
28 UNITED STATES MAGISTRATE JUDGE