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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM JAMES GRADFORD,
Plaintiff,
v.
MCDOUGALL,
Defendant.

**Case No. 1:17-cv-00575-AWI-MJS
(PC)**
**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**
(ECF No. 1)
THIRTY DAY DEADLINE TO AMEND

20 Plaintiff is a county jail inmate proceeding pro se and in forma pauperis (“IFP”). He
21 filed this civil rights action pursuant to 42 U.S.C. § 1983 on April 24, 2017. (ECF No. 1.)
22 Plaintiff’s complaint is before the Court for screening. He has declined Magistrate Judge
23 jurisdiction. (ECF No. 4.) No other parties have appeared.

24 **I. Screening Requirement**

25 The Court is required to screen complaints brought by prisoners seeking relief
26 against a governmental entity or an officer or employee of a governmental entity. 28
27 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner
28 has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon

1 which relief may be granted, or that seek monetary relief from a defendant who is
2 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee,
3 or any portion thereof, that may have been paid, the court shall dismiss the case at any
4 time if the court determines that . . . the action or appeal . . . fails to state a claim upon
5 which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 **II. Pleading Standard**

7 Section 1983 provides a cause of action against any person who deprives an
8 individual of federally guaranteed rights “under color” of state law. 42 U.S.C. § 1983. A
9 complaint must contain “a short and plain statement of the claim showing that the pleader
10 is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
11 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
12 mere conclusory statements, do not suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
13 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)), and courts “are not
14 required to indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d
15 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual
16 allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678.

17 Under section 1983, Plaintiff must demonstrate that each defendant personally
18 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
19 2002). This requires the presentation of factual allegations sufficient to state a plausible
20 claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,
21 969 (9th Cir. 2009). Prisoners proceeding pro se in civil rights actions are entitled to
22 have their pleadings liberally construed and to have any doubt resolved in their favor,
23 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted), but nevertheless,
24 the mere possibility of misconduct falls short of meeting the plausibility standard, Iqbal,
25 556 U.S. at 678; Moss, 572 F.3d at 969.

26 **III. Plaintiff’s Allegations**

27 Plaintiff is currently detained at the Stanislaus County Public Safety Center in
28 Modesto, California. He brings this suit against Deputy McDougall for interfering with

1 Plaintiff's legal mail. His allegations may be summarized as follows:

2 On February 11, 2017, Deputy McDougall removed five pieces of Plaintiff's
3 outgoing legal mail, including a piece directed to Plaintiff's criminal attorney, from the
4 outgoing mailbox of Unit E. Defendant called Plaintiff over to his desk, then broke the
5 seals of each envelope, removed the contents, read them, searched them for
6 contraband, replaced them in their envelopes, sealed and signed them, all without
7 Plaintiff's permission. Earlier that same day, Deputy Freddie had already searched these
8 envelopes for contraband, sealed them, and signed them. Plaintiff complains that his right
9 of access to the Court has been violated and he has lost the opportunity to have a "fair or
10 just" civil or criminal trial or a chance to prove his innocence in his pending criminal case.

11 Plaintiff has already filed a civil suit against Deputy McDougall complaining about
12 other instances of tampering. He seeks 1.5 million dollars in damages.

13 **IV. Discussion**

14 **A. Legal Mail**

15 Inmates have a "First Amendment right to send and receive mail." Witherow v.
16 Paff, 52 F.3d 264, 265 (9th Cir. 1995). The censorship of outgoing prisoner mail is
17 justified if the following criteria are met: (1) the regulation furthers "an important or
18 substantial government interest unrelated to the suppression of expression" and (2) "the
19 limitation on First Amendment freedoms must be no greater than is necessary or
20 essential to the protection of the particular governmental interest involved." Proconier v.
21 Martinez, 416 U.S. 396, 413 (1974) (limited by Thornburgh v. Abbott, 490 U.S. 401, 413–
22 14 (1989), only as test relates to incoming mail).

23 Furthermore, the Sixth Amendment guarantees Plaintiff the right to counsel in his
24 pending criminal case. U.S. CONST. amend VI. Jail officials cannot read legal mail
25 directed to an attorney, although they may scan it and inspect it for contraband or
26 suspicious contents in the inmate's presence. Nordstrom v. Ryan, 762 F.3d 903, 906 (9th
27 Cir. 2014). "When the government deliberately interferes with the confidential relationship
28 between a criminal defendant and defense counsel, that interference violates the Sixth

1 Amendment right to counsel if it substantially prejudices the criminal defendant.” Williams
2 v. Woodford, 384 F.3d 567, 584–85 (9th Cir.2004); see also United States v. Irwin, 612
3 F.2d 1182, 1186–87 (9th Cir.1980). A criminal defendant is thus denied the effective
4 assistance of counsel if he is denied the right to communicate privately and candidly with
5 his attorney. Nordstrom, 762 F.3d at 910. The Ninth Circuit has found that allegations that
6 a prison official read mail addressed to an attorney, and did not merely scan it, are
7 sufficient to state a claim for the violation of the Sixth Amendment right to counsel. Id. at
8 910-11; see also Weatherford v. Bursey, 429 U.S. 545, 554 n. 4 (1977) (“One threat to
9 the effective assistance of counsel posed by government interception of attorney-client
10 communications lies in the inhibition of free exchanges between defendant and counsel
11 because of the fear of being overheard.”)

12 Plaintiff does not argue that the jail may not inspect inmates’ mail, nor could he—
13 such inspections are necessary to preserve institutional security. Rather, Plaintiff’s claims
14 appear to rest on his belief that Defendant’s inspection of his mail violated his right to
15 counsel. On these facts, however, the Court is not prepared to conclude that Defendant
16 improperly “read” Plaintiff’s mail rather than simply scanned it. Plaintiff should file an
17 amended complaint describing what precisely transpired when Defendant opened and
18 inspected his mail that led Plaintiff to believe Defendant read the contents rather than
19 merely inspected them. To the extent Defendant opened and inspected Plaintiff’s legal
20 mail after another Deputy had already done so, Plaintiff should explain why this was
21 improper.

22 **B. Access to the Courts**

23 The right of access to the courts requires that prisoners have the capability of
24 bringing challenges to sentences or conditions of confinement. See Lewis v. Casey, 518
25 U.S. 343, 356-57 (1996). Therefore, the right of access to the courts is only a right to
26 present these kinds of claims to the court, and not a right to discover claims or to litigate
27 them effectively once filed. See id. at 354–55.

28 Furthermore, the prisoner must allege an actual injury. See id. at 349. “Actual

1 injury” is prejudice with respect to contemplated or existing litigation, such as the inability
2 to meet a filing deadline or present a non-frivolous claim. See id.; see also Phillips v.
3 Hust, 477 F.3d 1070, 1075 (9th Cir. 2007). Delays in providing legal materials or
4 assistance which result in prejudice are “not of constitutional significance” if the delay is
5 reasonably related to legitimate penological purposes. Lewis, 518 U.S. at 362.

6 At this juncture, Plaintiff has not alleged any actual harm to current or future
7 litigation. He will be given leave to amend.

8 **VI. Conclusion**

9 Plaintiff’s complaint will be dismissed for failure to state a claim. Plaintiff will be
10 given an opportunity to amend, if he believes, in good faith, he can cure the identified
11 deficiencies. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Noll v. Carlson,
12 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff amends, he may not change the
13 nature of this suit by adding new, unrelated claims in his amended complaint. George v.
14 Smith, 507 F.3d 605, 607 (7th Cir. 2007).

15 If Plaintiff files an amended complaint, it should be brief, Fed. R. Civ. P. 8(a), but
16 under section 1983, it must state what each named defendant did that led to the
17 deprivation of Plaintiff’s constitutional rights and liability may not be imposed on
18 supervisory personnel under the theory of *respondeat superior*. Iqbal, 556 U.S. at 676-77.
19 Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to
20 relief above the speculative level. . . .” Twombly, 550 U.S. at 555 (citations omitted).

21 Finally, an amended complaint supersedes the original complaint, Lacey v.
22 Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be
23 “complete in itself without reference to the prior or superseded pleading,” Local Rule 220.

24 Accordingly, it is HEREBY ORDERED that:

- 25 1. Plaintiff’s complaint (ECF No. 1) is DISMISSED with leave to amend;
- 26 2. The Clerk’s Office shall send Plaintiff a blank complaint form along with a
27 copy of the complaint filed April 24, 2017;

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- 3. Within **thirty (30) days** from the date of service of this order, Plaintiff must either:
 - a. File an amended complaint curing the deficiencies identified by the Court in this order, or
 - b. File a notice of voluntary dismissal; and
- 4. If Plaintiff fails to comply with this order, the Court will recommend this action be dismissed for failure to obey a court order and failure to prosecute.

IT IS SO ORDERED.

Dated: May 30, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE