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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DeWAYNE THOMPSON,

No. CIV S-09-3478-CMK-P

Plaintiff,

vs.

ORDER

CHRIS MAUCK, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “short and plain statement

1 of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means  
2 that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172,  
3 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the  
4 complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it  
5 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege  
6 with at least some degree of particularity overt acts by specific defendants which support the  
7 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
8 impossible for the court to conduct the screening required by law when the allegations are vague  
9 and conclusory.

#### 10 I. PLAINTIFF’S ALLEGATIONS

11 Plaintiff ‘s complaint raises issues with disparate treatment he claims he received  
12 from various prison staff for complaining about the use of racial epithets. He claims defendant  
13 Mauck used the word “nigger” either to or around him. When he complained of the use of that  
14 language, defendant Mauck discriminated against him by changing his job in the canteen. He  
15 then filed a grievance and defendant Thompson changed his job assignment again. He alleges  
16 these two defendants violated his Equal Protection rights as he was treated differently because of  
17 his race. The undersigned finds service appropriate for these two defendants, as addressed by  
18 separate order.

19 Plaintiff also alleges deficiencies in the inmate grievance process. He claims  
20 defendant Statti screened out his appeal despite Plaintiff informing him of defendant Thompson’s  
21 misconduct. He also alleges defendant Mauck harassed him by using racial epithets, and that the  
22 Director of Corrections, later identified as Timothy Lockwood, is liable for the operation of an  
23 inadequate appeal system.<sup>1</sup>

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26 <sup>1</sup> Plaintiff has filed a request that he be allowed to amend his complaint to identify  
his “Doe” defendants as Timothy Lockwood. This request will be granted.

1 **II. DISCUSSION**

2 Appeals Process

3 Prisoners have no stand-alone due process rights related to the administrative  
4 grievance process. See Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988); see also Ramirez v.  
5 Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (holding that there is no liberty interest entitling  
6 inmates to a specific grievance process). Because there is no right to any particular grievance  
7 process, it is impossible for due process to have been violated by ignoring or failing to properly  
8 process grievances. Numerous district courts in this circuit have reached the same conclusion.  
9 See Smith v. Calderon, 1999 WL 1051947 (N.D. Cal 1999) (finding that failure to properly  
10 process grievances did not violate any constitutional right); Cage v. Cambra, 1996 WL 506863  
11 (N.D. Cal. 1996) (concluding that prison officials’ failure to properly process and address  
12 grievances does not support constitutional claim); James v. U.S. Marshal’s Service, 1995 WL  
13 29580 (N.D. Cal. 1995) (dismissing complaint without leave to amend because failure to process  
14 a grievance did not implicate a protected liberty interest); Murray v. Marshall, 1994 WL 245967  
15 (N.D. Cal. 1994) (concluding that prisoner’s claim that grievance process failed to function  
16 properly failed to state a claim under § 1983). Prisoners do, however, retain a First Amendment  
17 right to petition the government through the prison grievance process. See Bradley v. Hall, 64  
18 F.3d 1276, 1279 (9th Cir. 1995). Therefore, interference with the grievance process may, in  
19 certain circumstances, implicate the First Amendment.

20 Accordingly, Plaintiff is unable to state a claim against either defendant Statti or  
21 Lockwood based on an alleged broken grievance process.

22  
23 Harassment

24 The treatment a prisoner receives in prison and the conditions under which the  
25 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel  
26 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,

1 511 U.S. 825, 832 (1994). The Eighth Amendment “embodies broad and idealistic concepts of  
2 dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102  
3 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.  
4 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with  
5 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,  
6 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only  
7 when two requirements are met: (1) objectively, the official’s act or omission must be so serious  
8 such that it results in the denial of the minimal civilized measure of life’s necessities; and (2)  
9 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of  
10 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison  
11 official must have a “sufficiently culpable mind.” See id. Allegations of guarantee harassment do  
12 not state a claim under the Eighth Amendment unless it is alleged that the harassment was  
13 “calculated to . . . cause [the prisoner] psychological damage.” Oltarzewski v. Ruggiero, 830  
14 F.2d 136, 139 (9th Cir. 1987); see also Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996),  
15 amended by 135 F.3d 1318 (9th Cir. 1998).

16 Plaintiff’s allegations that defendant Mauck used racial epithets on one occasion,  
17 and could not guarantee that he would not use the same slurs on some other occasion is  
18 insufficient to state a claim under the Eighth Amendment. There is no indication that the slurs  
19 were used in an attempt to cause Plaintiff psychological damage.

#### 20 21 Supervisory Liability

22 Supervisory personnel are generally not liable under § 1983 for the actions of their  
23 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no  
24 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional  
25 violations of subordinates if the supervisor participated in or directed the violations. See id. The  
26 Supreme Court has rejected the notion that a supervisory defendant can be liable based on



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2. The Clerk of the Court is directed to update the docket to identify Timothy Lockwood is the Director of California Department of Corrections and Rehabilitations; and

3. Plaintiff shall show cause in writing, within 30 days of the date of this order, why these claims should not be dismissed for failure to state a claim.

DATED: April 30, 2010

  
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**CRAIG M. KELLISON**  
UNITED STATES MAGISTRATE JUDGE