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

VANCE BLAINE,

No. CIV S-10-0103-MCE-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

DUCAN, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s amended complaint (Doc. 13).

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 of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

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

9 I. PLAINTIFF'S ALLEGATIONS

10 This action proceeds on plaintiff's amended complaint, filed as of right on April
11 9, 2010. Plaintiff names the following as defendants: Ducan, Stevens, White, Johnson, Viera,
12 Roszco, Lassister, Archard, Morrison, and Watson.¹ Plaintiff offers the following statement of
13 his first claim:

14 Plaintiff alleges that prison officials misconduct acted oppressively and
15 abusively by excessive cell searches, opening of plaintiff's legal mail,
16 reading the contents, then making a determination that plaintiff's legal
17 mail was contraband, then proceeded to confiscate the legal mail. Then
18 making plaintiff go through the administrative appeal system before
19 returning legal mail which took an exceptionable long period of time
20 which denied plaintiff a meaningful access to the courts. [sic].

18 Plaintiff then sets forth the following factual allegations in support of this claim:

- 19 1. On June 19, 2009, defendant White performed a cell search. During the
20 course of this search, White allegedly opened and read various "individual
21 envelopes [sic]" which plaintiff claims are legal mail. According to
22 plaintiff, White determined that "plaintiff's legal mail was contraband. . ." and then confiscated it.

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24 ¹ Defendants White and Stevens are listed in the caption of the amended complaint,
25 but not at Part III which asks for plaintiff to list all defendants. Johnson is listed as a defendant
26 in Part III, but not listed on the court's docket. The Clerk of the Court is directed to update the
docket to add Johnson as a named defendant.

- 1 2. Plaintiff then informed White that the item of mail had been received just
2 the day prior and related to a pending California Supreme Court post-
3 conviction action. Plaintiff claims that defendant White refused to answer
4 him when asked why his legal mail was being confiscated.
- 5 3. White then took plaintiff to the prison mail room where defendant Stevens
6 again “open plaintiff’s legal mail and commence to reading all of the
7 contents to review the legal mail officially and to make a determination to
8 see if plaintiff’s legal mail is contraband [sic].” Stevens also determined
9 that the mail contained contraband “and further stated that if he [Stevens]
10 knew about it plaintiff would not have received it at all. . . .” Plaintiff was
11 informed that correctional staff had the right to confiscate any contraband
12 materials.
- 13 4. Plaintiff was then taken to see defendant Ducan who also opened and
14 “slowly read” plaintiff’s legal mail. Ducan agreed with White and Stevens
15 that the mail was contraband. Ducan instructed White to “issue plaintiff a
16 search receipt with the items confiscated.”
- 17 5. On June 22, 2009, plaintiff spoke with defendant Viera to “convey my
18 concerns about my legal mail and explain that I was in the courts with an
19 post-conviction writ of habeas corpus and that the information in the legal
20 mail is going to be used for evidence, which is a criminal identification
21 chronological history report [rap sheet]”
- 22 6. According to plaintiff, Viera then asked officer Morrison for the
23 combination to the locker where the confiscated mail had been placed.
24 Viera then read the mail himself and then gave Morrison instructions “to
25 take plaintiff to correction officer Watson in R and R to have plaintiff
26 fingerprinted and to mail his legal materials to the Federal Bureau of
Investigation (FBI) Department of Justice (DOJ).”
7. Plaintiff was taken to “R and R” the next day by Morrison to see defendant
Watson “who took custody of plaintiff’s legal mail and Watson then said
that he must read plaintiff’s legal mail to determine if he could legally
fingerprint plaintiff and then mail those prints to FBI-DOJ.” About 45
minutes later, plaintiff was fingerprinted and informed that information
would be sent to the FBI and DOJ.
8. Plaintiff states that he then filed an administrative appeal alleging that
defendants hindered his access to the courts by confiscating his legal mail.
Plaintiff’s appeal was denied at the first level by defendant Ducan on July
14, 2009.
9. Next, plaintiff claims that defendant Roszco “had plaintiff’s legal mail.”
Plaintiff states that Roszco and Watson “had a discussion on the legality of
mailing plaintiff’s legal mail which Watson gate plaintiff’s legal mail to
CC1 E. Roszco to determine if plaintiff mail can be mailed.”

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- 1 10. Dissatisfied with the first-level response to his inmate appeal, plaintiff
2 filed a grievance at the next level on July 24, 2009. In this second-level
3 grievance, plaintiff alleged that “correctional officers and staff are
4 deliberately hindering, obstructing, and denying plaintiff access to the
5 courts by not mailing plaintiff’s legal mail to the FBI-DOJ and not
6 explaining why plaintiff’s legal mail was confiscated and why it is
7 considered as contraband. . . .” He also demanded to know where his legal
8 mail was then located. Plaintiff received a response to his second-level
9 appeal on August 28, 2009. The response indicated, according to plaintiff,
10 that “Correctional Sergeant Viera had hand delivered plaintiff’s legal mail
11 to the inmate trust office and that the record indicate that plaintiff’s legal
12 mail was sent out on July 16, 2009.”
- 13 11. Plaintiff alleges that this appeal response is false in that, on July 20, 2009,
14 defendant Roszco “just put plaintiff’s legal mail . . . in her desk draw[er]
15 and forgot about it, and failed to mail plaintiff legal mail.” Plaintiff does
16 state that his legal mail was eventually mailed out on August 26, 2009.
- 17 12. Plaintiff’s final-level appeal was denied on December 21, 2009.

18 Next, plaintiff outlines the following statement of his second claim:

19 Plaintiff alleges that prison officials misconduct led to retaliatory
20 tactics by confiscating plaintiff’s fore (4) boxes of legal materials and
21 prison officials ignored multiple written request to return plaintiff legal
22 materials that needed for pending court case. . . in California Supreme
23 Court. Plaintiff alleges that prison officials retaliatory and misconduct
24 actions are for plaintiff use of the administrative appeal process . . . where
25 prison officials refuse to allow plaintiff to show when bowel and urin
26 incontence happen even though plaintiff had medical chrono from a
 doctor, but plaintiff was still denied. And [another grievance] where
 plaintiff alleges that prison official open legal mail, read it, then
 confiscated it as contraband and refuse to mail legal mail in a timely
 manner which hinder, obstructed and denied plaintiff right of access to the
 courts.

27 Plaintiff alleges the following supporting facts:

- 28 1. Plaintiff alleges that, while waiting from a response to a prisoner grievance
29 he had filed, “plaintiff was subjected to excess sell searched, by
30 correctional officers W.H. White, Archard, Morrison, Lassiter, and
31 Sergeant Johnson. . . .” He states that legal mail was improperly opened
32 during the course of these searches and “these same prison officials made
33 a determination that plaintiff had an unacceptable amount of legal
34 materials.” Plaintiff adds: “The above named prison officials call
35 Correctional Officer Aguirre who stores prisoners property who has
36 excessive amount of legal materials.” Plaintiff states that he attempted to
 explain to Aguirre that the materials were related to an ongoing case.

1 As a jurisdictional requirement flowing from the standing doctrine, the prisoner
2 must allege an actual injury. See id. at 349. “Actual injury” is prejudice with respect to
3 contemplated or existing litigation, such as the inability to meet a filing deadline or present a
4 non-frivolous claim. See id.; see also Phillips v. Hust, 477 F.3d 1070, 1075 (9th Cir. 2007).
5 Delays in providing legal materials or assistance which result in prejudice are “not of
6 constitutional significance” if the delay is reasonably related to legitimate penological purposes.
7 Lewis, 518 U.S. at 362.

8 In this case, plaintiff has not alleged any actual injury. While he states that he had
9 cases pending in the California Supreme Court at the time his legal materials were not in his
10 possession, he does not allege that he missed any deadline set by the court or that he was
11 prejudiced in any way by the inability to access his legal materials.

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1 **III. CONCLUSION**

2 Because it does not appear possible that the deficiencies identified herein can be
3 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
4 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

5 Based on the foregoing, the undersigned recommends that this action be dismissed
6 and that all pending motions be denied as moot.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court. Responses to objections shall be filed within 14 days after service of
11 objections. Failure to file objections within the specified time may waive the right to appeal.
12 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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14 DATED: August 5, 2010

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