



1 placed on lockdown/modified program which prevented him from visiting the law library to  
2 access materials to complete his petition. Id. at 4-5, ¶¶ 6-12. Plaintiff had no involvement in the  
3 incidents that caused the lockdown and prison officials were aware of his upcoming court  
4 deadline due to the “Inmate Appeal forms, Inmate Request for Interview forms” and other  
5 correspondence that plaintiff submitted advising them of that deadline. Id. at 4, ¶¶ 6, 7. There  
6 were no alternative means to obtain law library access because the paging system was inadequate  
7 and impossible to conduct legal research with. Id., ¶ 8. As a result, plaintiff was unable to timely  
8 file a certiorari petition with the United States Supreme Court. Id. at 5, ¶¶ 13, 14.

9 The issue plaintiff sought to appeal to the Supreme Court dealt with whether Crawford v.  
10 Washington, 541 U.S. 36 (2004), applied to his case. Id., ¶ 17. In his federal habeas petition  
11 plaintiff argued that his rights under the Confrontation Clause were violated because the out-of-  
12 court statements that he was the murderer, made by three non-testifying witnesses, were admitted  
13 into evidence through the testimony of Sergeant Louis Cruz. Id. at 6, ¶ 18A. Plaintiff claims that  
14 because his conviction was not finalized until after the decision in Crawford was issued, the  
15 district court was mistaken when it found that Crawford did not apply retroactively to his case.  
16 Id. at 5, 13-15, ¶¶ 17, 18.

17 Plaintiff seeks declaratory relief, unspecified injunctive relief, and compensatory and  
18 punitive damages against defendants. Id. at 3, 8.

## 19 II. Motion to Dismiss

### 20 A. Legal Standard for Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6)

21 In order to survive dismissal for failure to state a claim pursuant to Rule 12(b)(6), a  
22 complaint must contain more than a “formulaic recitation of the elements of a cause of action;” it  
23 must contain factual allegations sufficient to “raise a right to relief above the speculative level.”  
24 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted). “The pleading must  
25 contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a  
26 legally cognizable right of action.” Id. (quoting 5 C. Wright & A. Miller, Federal Practice and  
27 Procedure § 1216, pp. 235-36 (3d ed. 2004)). “[A] complaint must contain sufficient factual  
28 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal,

1 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). “A claim has facial plausibility  
2 when the plaintiff pleads factual content that allows the court to draw the reasonable inference  
3 that the defendant is liable for the misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556).

4 In considering a motion to dismiss, the court must accept as true the allegations of the  
5 complaint in question, Hosp. Bldg. Co. v. Rex Hosp. Tr., 425 U.S. 738, 740 (1976), and construe  
6 the pleading in the light most favorable to the party opposing the motion and resolve all doubts in  
7 the pleader’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421. The court will “‘presume that  
8 general allegations embrace those specific facts that are necessary to support the claim.’” Nat’l  
9 Org. for Women, Inc. v. Scheidler, 510 U.S. 249, 256 (1994) (quoting Lujan v. Defenders of  
10 Wildlife, 504 U.S. 555, 561 (1992)). The court need not accept legal conclusions “‘cast in the  
11 form of factual allegations.” W. Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

12 B. Legal Standard for Access to the Courts Claim

13 Under the First and Fourteenth Amendments to the Constitution, state inmates have a  
14 fundamental constitutional right of access to the courts. Lewis v. Casey, 518 U.S. 343, 346  
15 (1996); Phillips v. Hust, 477 F.3d 1070, 1075 (9th Cir. 2007), overruled on other grounds by Hust  
16 v. Phillips, 555 U.S. 1150 (2009). The right is limited to direct criminal appeals, habeas petitions,  
17 and civil rights actions. Lewis, 518 U.S. at 354. Prisoners do not, however, have a constitutional  
18 right to a law library. Id., 518 U.S. at 350-51. Law libraries are just one means of assuring  
19 prisoners meaningful access to the courts. Id.

20 Claims for denial of access to the courts may arise from the frustration or hindrance of “a  
21 litigating opportunity yet to be gained” (forward-looking access claim) or from the loss of a  
22 meritorious suit that cannot now be tried (backward-looking claim). Christopher v. Harbury, 536  
23 U.S. 403, 412-15 (2002). For backward-looking claims, plaintiff “must show: 1) the loss of a  
24 ‘nonfrivolous’ or ‘arguable’ underlying claim; 2) the official acts frustrating the litigation; and 3)  
25 a remedy that may be awarded as recompense but that is not otherwise available in a future suit.”  
26 Phillips, 477 F.3d at 1076 (citing Christopher, 536 U.S. at 413-14).

27 To have standing to bring this claim, plaintiff must allege he suffered an actual injury.  
28 Lewis, 518 U.S. at 351-52; Vandelft v. Moses, 31 F.3d 794, 798 (9th Cir. 1994). To succeed, a

1 prisoner must have been denied the necessary tools to litigate a nonfrivolous claim attacking a  
2 conviction, sentence, or conditions of confinement. Christopher, 536 U.S. at 415; Lewis, 518  
3 U.S. at 353 & n.3. Plaintiff need not show that he would have been successful on the merits of  
4 his claims, but only that they were not frivolous. Allen v. Sakai, 48 F.3d 1082, 1085 & n.12 (9th  
5 Cir. 1994). “A claim is frivolous if it is without arguable merit either in law or fact.” Bilal v.  
6 Driver, 251 F.3d 1346, 1349 (11th Cir. 2001) (citations omitted). The Ninth Circuit has  
7 emphasized that “[a] prisoner need not show, ex post, that he would have been successful on the  
8 merits had his claim been considered. To hold otherwise would permit prison officials to  
9 substitute their judgment for the courts’ and to interfere with a prisoner’s right to court access on  
10 the chance that the prisoner’s claim would eventually be deemed frivolous.” Allen, 48 F.3d at  
11 1085. To properly plead a denial of access to the courts claim, “the complaint should state the  
12 underlying claim in accordance with Federal Rule of Civil Procedure 8(a), just as if it were being  
13 independently pursued, and a like plain statement should describe any remedy available under the  
14 access claim and presently unique to it.” Christopher, 536 U.S. at 417-18.

15 C. Discussion

16 Defendants argue that the second amended complaint should be dismissed because  
17 plaintiff has failed to adequately plead sufficient personal involvement by any of the defendants  
18 in the violation of his constitutional rights and because plaintiff has failed to allege that  
19 prohibiting access to the law library during a lockdown is a constitutional violation. ECF No. 48-  
20 1.

21 1. Personal Involvement

22 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
23 causal connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode,  
24 423 U.S. 362, 371 (1976); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). The second  
25 amended complaint alleges only that plaintiff’s constitutional rights were violated by “the  
26 defendants” generically. ECF No. 38. Plaintiff does not, at any time, identify the specific acts of  
27 any defendant. Id. However, the proposed third amended complaint, attached to plaintiff’s  
28 response to the motion to dismiss, demonstrates that plaintiff is capable of curing this deficiency

1 through amendment. ECF No. 51 at 5-13. Therefore, defendants’ motion to dismiss will be  
2 granted on the grounds that plaintiff has failed to allege sufficient personal involvement of the  
3 defendants and plaintiff will be afforded an opportunity to file an amended complaint as set forth  
4 below in Section III.

## 5 2. Constitutional Violation

6 Defendants also argue that the second amended complaint should be dismissed because  
7 plaintiff fails to allege facts that would show the lockdown was not reasonably related to  
8 legitimate penological objectives. ECF No. 48-1 at 5-6. In support of their argument Defendants  
9 rely on Fosselman v. Hidalgo, 1:11-cv-00575-AWI-MJS (PC), 2012 WL 484699, at \*5 (E.D. Cal.  
10 Feb. 14, 2012), in which the district court screened out the plaintiff’s access to the courts claim  
11 because the plaintiff had sufficiently meaningful access to the courts and alternatively did not  
12 present any “evidence demonstrating why the program lock-down was instituted, or that it was  
13 other than reasonably related to legitimate penological objectives.” Id. at 6. Fosselman is not  
14 controlling, and even if it were, it is distinguishable from the instant case.

15 In Fosselman, the plaintiff alleged only that the lockdown “only affected prisoners of  
16 Afrikan decent” and “caused many problems with the court” such as late filings. Fosselman,  
17 2012 WL 484699, at \*2. While plaintiff in this case does allege that he was included in the  
18 lockdown or modified program based solely on his race, he also alleges that the paging system  
19 was inadequate, that he requested to be moved to another section of the prison where he would be  
20 allowed access to the law library, and that there is precedent for transferring inmates or escorting  
21 inmates to the law library. ECF No. 38 at 4-5, ¶¶ 6, 8, 10, 15. In determining whether a prison  
22 regulation affecting constitutional rights is reasonable, the policy must be analyzed under Turner  
23 v. Safely, 482 U.S. 78 (1987). The four factors that must be considered under Turner are (1)  
24 whether there is a “‘valid, rational connection’ between the prison regulation and the legitimate  
25 governmental interest;” (2) “whether there are alternative means of exercising the right that  
26 remain open;” (3) the impact of accommodating the constitutional right; and (4) “the absence of  
27 ready alternatives.” Id. at 89-90. Even if the court assumes there was a rational connection  
28 between the lockdown and a legitimate government interest, the additional allegations by plaintiff

1 implicate the second and fourth Turner factors, and, if true, would indicate those factors weigh in  
2 plaintiff's favor. The court therefore finds that at the pleading stage, plaintiff has sufficiently  
3 alleged the restrictions he was subject to were not reasonable and therefore violated his rights.

4 Defendants' argument that plaintiff's allegations regarding the adequacy of the paging  
5 system are insufficient (ECF No. 52 at 2) is without merit. Plaintiff alleges that "the paging  
6 system is inadequate, and impossible to conduct legal research, find case law regarding his issues  
7 without being able to check out the legal books." "In reviewing a motion to dismiss pursuant to  
8 Rule 12(b)(6), [the court] must accept as true all factual allegations in the complaint and draw all  
9 reasonable inferences in favor of the nonmoving party." Retail Prop. Trust v. United Bhd. Of  
10 Carpenters and Joinders of Am., 768 F.3d 938, 945 (9th Cir. 2014) (citing Silvas v. E\*Trade  
11 Mortg. Corp., 514 F.3d 1001, 1003 (9th Cir. 2008)). While additional facts regarding the  
12 specifics of the paging system would no doubt be beneficial, the facts as currently alleged are  
13 sufficient to support the reasonable inference that plaintiff is claiming that in order to conduct  
14 legal research using the paging system, he must first have access to the legal books to know what  
15 to request and that he cannot access the legal books without first going to the law library.

16 D. Conclusion

17 Defendants' motion to dismiss will be granted on the grounds that plaintiff has failed to  
18 allege sufficient personal involvement by the individual defendants.

19 III. Leave to Amend

20 Plaintiff has included a proposed third amended complaint with his response to  
21 defendants' motion to dismiss. ECF No. 51 at 5-13. Because deficiencies remain with respect to  
22 the allegations against some defendants, the court will disregard the proposed third amended  
23 complaint and plaintiff shall be given leave to file a third amended complaint to cure the  
24 deficiencies.

25 If plaintiff chooses to file a third amended complaint, he must demonstrate how the  
26 conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo,  
27 423 U.S. at 371. Also, the complaint must allege in specific terms how each named defendant is  
28 involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative

1 link or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v.  
2 Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "vague and conclusory allegations of  
3 official participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d  
4 266, 268 (9th Cir. 1982) (citations omitted). In other words, plaintiff must identify the specific  
5 actions of each defendant, not simply make claims against "the defendants" generically.

6 Additionally, there is no respondeat superior liability under § 1983. Taylor v List, 880  
7 F.2d 1040, 1045 (9th Cir. 1989). "A defendant may be held liable as a supervisor under § 1983  
8 'if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a  
9 sufficient causal connection between the supervisor's wrongful conduct and the constitutional  
10 violation.'" Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting Hansen v. Black, 885  
11 F.2d 642, 646 (9th Cir. 1989)). Supervisory liability may also exist without any personal  
12 participation if the official implemented "a policy so deficient that the policy itself is a  
13 repudiation of the constitutional rights and is the moving force of the constitutional violation."  
14 Redman v. Cnty. of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and internal  
15 quotations marks omitted), abrogated on other grounds by Farmer v. Brennan, 511 U.S. 825  
16 (1970). Therefore, to the extent plaintiff seeks to bring claims against supervisors, he cannot  
17 simply rely on their position as supervisors and must identify the actions taken by the individuals  
18 that violated or led to the violation of his rights or identify the deficient policy the supervisor  
19 implemented.

20 Finally, "inmates lack a separate constitutional entitlement to a specific prison grievance  
21 procedure." Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855  
22 F.2d 639, 640 (9th Cir. 1988) ("There is no legitimate claim of entitlement to a grievance  
23 procedure.")). Accordingly, the prison grievance procedure does not confer any substantive  
24 constitutional rights upon inmates and actions in reviewing and denying inmate appeals generally  
25 do not serve as a basis for liability under section 1983. Id.; George v. Smith, 507 F.3d 605, 609  
26 (7th Cir. 2007). The Seventh Circuit has observed:

27 Only persons who cause or participate in the violations are  
28 responsible. Ruling against a prisoner on an administrative  
complaint does not cause or contribute to the violation. A guard

1           who stands and watches while another guard beats a prisoner  
2           violates the Constitution; a guard who rejects an administrative  
          complaint about a completed act of misconduct does not.

3           George, 507 F.3d at 609-10. However, because prison administrators cannot willfully turn a  
4           blind eye to constitutional violations being committed by subordinates, an individual who denies  
5           an inmate appeal and who had the authority and opportunity to prevent an ongoing constitutional  
6           violation could potentially be subject to liability if the individual knew about an existing or  
7           impending violation and failed to prevent it. See e.g., Jett v. Penner, 439 F.3d 1091, 1098 (9th  
8           Cir. 2006). So, to the extent plaintiff seeks to bring claims against defendants based on their  
9           involvement in the grievance process, he must allege sufficient facts to show that the individual  
10          was aware of an ongoing violation of his rights and had the authority and opportunity to intervene  
11          or take some other corrective action.

12           In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
13          make his third amended complaint complete. Local Rule 220 requires that an amended complaint  
14          be complete in itself without reference to any prior pleading. This is because, as a general rule,  
15          “[t]he amended complaint supersedes the original, the latter being treated thereafter as non-  
16          existent.” Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967), overruled in part by Lacey v. Maricopa  
17          Cnty., 693 F.3d 896, 929 (9th Cir. 2012) (claims dismissed with prejudice and without leave to  
18          amend do not have to be re-pled in subsequent amended complaint to preserve appeal). Once  
19          plaintiff files a third amended complaint, the previous pleading no longer serves any function in  
20          the case. Therefore, in a third amended complaint, as in an original complaint, each claim and the  
21          involvement of each defendant must be sufficiently alleged.

22          IV.    Conclusion

23           For the reasons set forth above, defendants’ motion to dismiss will be granted and plaintiff  
24          shall be given leave to file a third amended complaint.

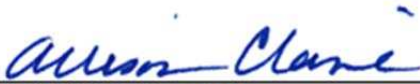
25           IT IS HEREBY ORDERED that:

26           1. Defendants’ motion to dismiss (ECF No. 48) is granted on the grounds that plaintiff  
27          has failed to allege sufficient personal involvement of the individual defendants and the second  
28          amended complaint (ECF No. 38) is dismissed.



1           2. Plaintiff is granted thirty days from the date of service of this order to file a third  
2 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
3 of Civil Procedure, and the Local Rules of Practice; the third amended complaint must bear the  
4 docket number assigned this case and must be labeled "Third Amended Complaint"; plaintiff  
5 must file an original and two copies of the third amended complaint; failure to file a third  
6 amended complaint in accordance with this order will result in dismissal of this action.

7 DATED: September 9, 2015

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ALLISON CLAIRE  
10 UNITED STATES MAGISTRATE JUDGE  
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