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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY E. TOMBS,
Plaintiff,
v.
WARDEN RON RACKLEY, et al,
Defendants.

No. 2:13-cv-1341 JAM KJN P

ORDER

I. Introduction

Plaintiff is a former state prisoner proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and is proceeding in forma pauperis. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302. Plaintiff’s amended complaint is now before the court.

II. Screening

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

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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 (2009) (citing Bell
5 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each
6 named defendant personally participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-
7 77; Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010).

8 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings
9 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now
10 higher. Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). To survive
11 screening, plaintiff’s claims must be facially plausible, which requires sufficient factual detail to
12 allow the Court to reasonably infer that each named defendant is liable for the misconduct
13 alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009).
14 The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are
15 ‘merely consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard.
16 Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

17 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
18 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
19 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
20 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
21 Lake Log Owners Ass’n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
22 this standard, the court must accept as true the allegations of the complaint in question, Hospital
23 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
24 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor, Jenkins v.
25 McKeithen, 395 U.S. 411, 421 (1969).

26 III. Plaintiff’s Allegations

27 Plaintiff submitted ten different amended complaints among his 233 page filing, all
28 referencing the instant case number, but each addressing different alleged violations by different

1 individuals. (ECF No. 17, *passim*.) In this court’s prior screening order, plaintiff was advised
2 that “[u]nrelated claims against different defendants must be pursued in multiple lawsuits.” (ECF
3 No. 8 at 9 (emphasis added).) That is, each complaint alleging unrelated causes of action must be
4 brought in a separate lawsuit, filed as a “complaint,” rather than as an “amended complaint” and
5 not bearing the case number for this action. Moreover, plaintiff must either pay the filing fee or
6 submit an application to proceed in forma pauperis with each separate complaint filed as a
7 separate action. Because of the nature of plaintiff’s filing, his amended complaint must be
8 dismissed, and plaintiff is granted leave to file a second amended complaint that complies with
9 this order. However, because it appears that many of plaintiff’s allegations contained in the
10 proposed amended complaints do not state cognizable civil rights violations, the court will, on
11 this one occasion, evaluate the issues raised in each amended complaint.

12 It is difficult to discern plaintiff’s causes of action because he again includes narrative
13 statements concerning perceived abuses, and again fails to include charging allegations, supported
14 by plausible facts, as to each individual named as a defendant. However, it appears that in his ten
15 separate proposed amended complaints, plaintiff raises various allegations that occurred at
16 different times, including vague allegations of retaliation (ECF No. 17 at 1-11); deliberate
17 indifference to medical needs (ECF No. 17 at 12-14; 73-83); interference with mail (ECF No. 17
18 at 66-73; 98-114; 124-41; 167-232); allegations regarding searches and a verbal threat (ECF No.
19 17 at 84-97); and claims that defendants verbally induced plaintiff and his cellmate to get in a
20 fight (ECF No. 17 at 115-123). One amended complaint included a combination of these claims.
21 (ECF No. 17 at 142-66.) The court screens plaintiff’s allegations as follows.

22 IV. Discussion

23 A. Rule 18 and 20

24 A basic lawsuit is a single claim against a single defendant. Federal Rule of Civil
25 Procedure 18(a) allows a plaintiff to add multiple claims to the lawsuit when they are against the
26 same defendant. Federal Rule of Civil Procedure 20(a)(2) allows a plaintiff to join multiple
27 defendants to a lawsuit where the right to relief arises out of the same “transaction, occurrence, or
28 series of transactions” and “any question of law or fact common to all defendants will arise in the

1 action.” Id. However, unrelated claims that involve different defendants must be brought in
2 separate lawsuits. See George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). This rule is not only
3 intended to avoid confusion that arises out of multiple claim, multiple defendant lawsuits, but also
4 to ensure that prisoners pay the required filing fees for their lawsuits and prevent prisoners from
5 circumventing the three strikes rule under the Prison Litigation Reform Act. 28 U.S.C. § 1915(g).

6 The Court advises plaintiff that each claim that is raised in his second amended complaint
7 must be permitted by either Rule 18 or Rule 20. Plaintiff may state a single claim against a single
8 defendant. Plaintiff may then add any additional claims to his action that are against the same
9 defendant under Rule 18. Fed. R. Civ. P. 18. Plaintiff may also add any additional claims against
10 other defendants only if those claims arise from the same transaction, occurrence, or series of
11 transactions as his original claim. Fed. R. Civ. P. 20(a)(2). Any attempt to join claims that are
12 not permitted by the Federal Rules of Civil Procedure will result in those claims being dismissed
13 as improperly joined.

14 B. Rule 8

15 A complaint must contain “a short and plain statement of the claim showing that
16 [Plaintiff] is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Each allegation must be simple, concise,
17 and direct.” Fed. R. Civ. P. 8(d)(1). A party must state its claims or defenses in numbered
18 paragraphs, each limited as far as practicable to a single set of circumstances.” Fed. R. Civ. P.
19 10(b). “[E]ach claim founded on a separate transaction or occurrence . . . must be stated in a
20 separate count.” Fed. R. Civ. P. 10(b).

21 The function of the complaint is not to list every single fact relating to plaintiff’s claims.
22 If plaintiff files a second amended complaint, he must set forth his claims in a simple, concise,
23 and direct manner in order to meet the requirements of Rule 8.

24 C. Individualized Inquiry into Causation

25 As noted above, plaintiff failed to include charging allegations as to each named
26 defendant. Plaintiff does not clearly allege how each individual defendant is responsible for the
27 harm alleged. “A person deprives another ‘of a constitutional right, within the meaning of section
28 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform

1 an act which he is legally required to do that causes the deprivation of which [the plaintiff
2 complaints.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988) (quoting Johnson v. Duffy, 588
3 F.2d 740, 743 (9th Cir. 1978)). “The inquiry into causation must be individualized and focus on
4 the duties and responsibilities of each individual defendant whose acts or omissions are alleged to
5 have caused a constitutional deprivation .” Id.

6 Here, plaintiff does not provide clear allegations showing how each individual defendant's
7 actions caused the constitutional deprivation alleged. In at least one of the amended complaints,
8 plaintiff set forth the allegations on one page, and then on another page listed the names of each
9 defendant he contends is liable. (See, e.g., ECF No. 17 at 5.) Plaintiff does not clearly allege
10 how each of the individual defendants participated in an affirmative act or omission giving rise to
11 his constitutional allegation. Accordingly, such claims are not cognizable.

12 D. Retaliation

13 In a number of his proposed amended complaints, plaintiff makes vague reference to a
14 claim for retaliation, which was not included in his original complaint. Specifically, plaintiff
15 alleges that while he was incarcerated at DVI, an individual named Jordan Keith Wallace was
16 working there as a plumber. Plaintiff claims that ten years ago, Wallace was employed as a Yuba
17 County parole officer. While Wallace was plaintiff's parole officer, Wallace used “unlawful
18 force” “with handcuffs,” “beat” plaintiff, and was fired from his job. (ECF No. 17 at 2, 4.)
19 Plaintiff wrote a letter to the Warden and CDCR concerning what Wallace did to plaintiff ten
20 years ago, and plaintiff alleges that after staff read the letter, “things got worse” and “they started
21 abusing me more.” (ECF No. 17 at 3.) Plaintiff claims Wallace has a lot of friends that work for
22 the CDCR, and appears to allege that Wallace used other officers to retaliate against plaintiff.
23 (ECF No. 17 at 3, 4.)

24 “Prisoners have a First Amendment right to file grievances against prison officials and to
25 be free from retaliation for doing so.” Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012)
26 (citing Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)). Also protected by the First
27 Amendment is the right to pursue civil rights litigation in federal court without retaliation. Silva
28 v. Di Vittorio, 658 F.3d 1090, 1104 (9th Cir. 2011). “Within the prison context, a viable claim of

1 First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took
2 some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and
3 that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action
4 did not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559,
5 567-68 (9th Cir. 2005).

6 In order to state a claim under 42 U.S.C. § 1983 for retaliation, plaintiff must establish
7 that he was retaliated against for exercising a constitutional right, and that the retaliatory action
8 was not related to a legitimate penological purpose, such as preserving institutional security.
9 Rizzo v. Dawson, 778 F.2d 527 (9th Cir. 1985). Plaintiff must demonstrate a specific link
10 between the alleged retaliation and the exercise of a constitutional right. See Pratt v. Rowland, 65
11 F.3d 802, 807-08 (9th Cir. 1995) (there must be probative evidence to establish a crucial link in
12 the logical chain required to support retaliation; timing alone is insufficient). Plaintiff is required
13 to show that the exercise of his First Amendment rights was chilled, although not necessarily
14 silenced, by the alleged retaliatory conduct. See Resnick v. Hayes, 213 F.3d 443, 449 (9th Cir.
15 2000) (plaintiff promptly contested the charge against him and won); see also Rhodes, 408 F.3d at
16 569.

17 Here, plaintiff does not allege that he was engaged in protected conduct, and the factual
18 allegations do not support a claim based on retaliation or the First Amendment. Thus, plaintiff
19 should not renew his retaliation claim in any subsequent civil rights complaint.¹

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22 ¹ Plaintiff also claims that the Warden failed to respond to plaintiff’s complaint letter. There is
23 no constitutional right to a prison administrative appeal or grievance system; consequently, a
24 prison official's failure to process grievances is not actionable under § 1983. See Ramirez v.
25 Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (prisoner's claimed loss of liberty interest in processing
26 of administrative appeals does not violate due process because prisoners lack separate
27 constitutional entitlement to specific prison grievance system). Further, while a prisoner retains a
28 First Amendment right to petition the government for redress of grievances as to the
constitutional claim underlying an administrative grievance, he possesses no constitutional right
to a response to his grievance from prison officials. See Flick v. Alba, 932 F.2d 728, 729 (8th
Cir. 1991) (prisoner's First Amendment right of access to courts is not compromised by prison's
refusal to entertain grievance). Thus, to the extent that plaintiff alleges the warden did not
respond to his letter of complaint, such claim is not cognizable.

1 E. Deliberate Indifference to Serious Medical Needs

2 Two of plaintiff's amended complaints address medical issues. (ECF No. 17 at 12-14; 73-
3 83.) First, plaintiff alleges that he was given shots for Hepatitis A and B, but that he was refused
4 treatment for his Hepatitis-C. (ECF No. 17 at 13.) Second, plaintiff alleges that while he
5 attempted to obtain reading glasses, Dr. Mitchell prescribed eyeglasses that plaintiff could not see
6 out of, and when he returned to pick up the new glasses with different lenses, the legs of the
7 glasses were bent. (ECF No. 17 at 73-74.) Third, plaintiff claims he was wrongfully denied his
8 wheelchair.

9 To state a section 1983 claim for a constitutional violation based on inadequate medical
10 care, plaintiff must allege "acts or omissions sufficiently harmful to evidence deliberate
11 indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). To prevail,
12 plaintiff must show both that his medical needs were objectively serious, and that defendant
13 possessed a sufficiently culpable state of mind. Wilson v. Seiter, 501 U.S. 294, 297-99 (1991);
14 McKinney v. Anderson, 959 F.2d 853, 854 (9th Cir. 1992). In applying this standard, the Ninth
15 Circuit has held that before it can be said that a prisoner's civil rights have been abridged, "the
16 indifference to his medical needs must be substantial. Mere 'indifference,' 'negligence,' or
17 'medical malpractice' will not support this cause of action." Broughton v. Cutter Laboratories,
18 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06.) A complaint that a
19 physician has been negligent in diagnosing or treating a medical condition does not state a valid
20 claim of medical mistreatment under the Eighth Amendment. Even gross negligence is
21 insufficient to establish deliberate indifference to serious medical needs. See Wood v.
22 Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

23 Here, plaintiff's allegations as to defendant Mitchell fail to demonstrate deliberate
24 indifference to plaintiff's serious medical needs. Plaintiff was provided glasses, and it is not
25 uncommon for lenses to be adjusted following the first prescription, nor is it uncommon for the
26 frames to need adjustment to a particular patient's head. Plaintiff again alleges no facts rising to
27 the level of deliberate indifference in connection with his claims concerning eyeglasses. Plaintiff
28 should not renew this claim in any subsequent civil rights complaint.

1 Plaintiff raises a new allegation regarding his treatment for Hepatitis. Plaintiff alleges that
2 he wanted treatment for his Hepatitis C, but was only provided shots for Hepatitis A and B.
3 However, plaintiff included no allegations demonstrating any defendant acted with a culpable
4 state of mind in connection with this claim. Moreover, “a difference of opinion between a
5 prisoner-patient and prison medical authorities regarding treatment does not give rise to a [§]1983
6 claim.” Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981). To establish that such a
7 difference of opinion amounted to deliberate indifference, the prisoner “must show that the course
8 of treatment the doctors chose was medically unacceptable under the circumstances” and “that
9 they chose this course in conscious disregard of an excessive risk to [the prisoner's] health.” See
10 Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996). Thus, plaintiff should only renew his
11 claim concerning Hepatitis C if he can allege facts demonstrating that an individual was
12 deliberately indifferent to plaintiff’s serious medical needs. Any such claim must be brought in a
13 new action.

14 Plaintiff claims that his wheelchair was wrongfully confiscated. However, exhibits
15 provided by plaintiff reflect that his mobility impairment was not properly documented, and
16 based on a review of plaintiff’s health record, physical findings, and observation form, Physician
17 Assistant P. Safi determined that plaintiff’s disability status of “not confirmed” as previously
18 documented by Family Nurse Practitioner P. Mallory on December 1, 2011, remained unchanged.
19 (ECF No. 17 at 36.) Safi noted that plaintiff was observed by custody staff to ambulate with no
20 difficulty using his cane, and thus the wheelchair was discontinued as not medically warranted.
21 (ECF No. 17 at 36-37.) The documents provided by plaintiff demonstrate that plaintiff has a
22 difference of opinion with medical authorities as to whether plaintiff requires a cane and a
23 wheelchair for mobility rather than just a cane. As set forth above, a mere difference of opinion
24 does not demonstrate deliberate indifference to plaintiff’s serious medical needs.²

25 ² As plaintiff was informed in the prior screening order, plaintiff’s allegations fail to state a claim
26 under the Americans with Disabilities Act (“ADA”). Plaintiff again mentions the ADA in
27 connection with his wheelchair claim. However, plaintiff was not denied the use of his
28 wheelchair because of his disability. The treatment, or lack of treatment, concerning plaintiff’s
medical condition does not provide a basis upon which to impose liability under the ADA.
Simmons v. Navajo County, 609 F.3d 1011, 1022 (9th Cir. 2010) (“The ADA prohibits

1 Therefore, plaintiff should not renew his wheelchair claim in any subsequent civil rights
2 complaint.

3 F. Allegations re Searches

4 Plaintiff alleges that on March 21, 2012, upon entering the chow hall, defendant
5 Macdougall said something to plaintiff that he did not understand, and then searched plaintiff by
6 putting his arms under plaintiff's arms and throwing them up in the air with Macdougall's arms.
7 (ECF No. 17 at 85.) Upon exiting the chow hall, defendant Macdougall shoved his hand down the
8 side of plaintiff's wheelchair, and when plaintiff leaned forward, defendant Macdougall shoved
9 his hand up under plaintiff's buttocks. (ECF No. 17 at 85.) Plaintiff went back to his building
10 officer, and while he was telling Officer Rodriguez what Macdougall had done, Macdougall came
11 in and made threats to plaintiff. (ECF No. 17 at 86.) Plaintiff states: "The threats were made
12 was [Macdougall is] coming back to this building [to] search it for weapons and tell every inmate
13 in the building you told me there was weapons in the building." (ECF No. 17 at 86.)

14 Here, plaintiff did not renew his claim of sexual abuse, which was addressed in the prior
15 screening order. (ECF No. 8 at 5-6.) Plaintiff's current allegations, without more, fail to state a
16 cognizable civil rights claim. As plaintiff was previously informed, verbal threats, without more,
17 are not sufficient to state a constitutional deprivation under § 1983. Gaut v. Sunn, 810 F.2d 923,
18 925 (9th Cir. 1987) (mere threat does not constitute constitutional wrong, nor do allegations that
19 naked threat was for purpose of denying access to courts compel contrary result). Plaintiff alleges
20 no facts suggesting defendant Macdougall improperly searched plaintiff. Plaintiff does not allege
21 that defendant made good on his threat, or that plaintiff suffered harm from the threat. Thus,
22 plaintiff's allegations as to searches and a verbal threat by defendant Macdougall fail to state a
23 cognizable civil rights violation, and should not be included in any subsequent civil rights
24 complaint.

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28 discrimination because of disability, not inadequate treatment for disability.")

1 G. Eighth Amendment - Deliberate Indifference to Safety

2 While not entirely clear, it appears that plaintiff alleges that defendant Mondoza, Croom
3 and Patterson set plaintiff up to fight with his cellmate Lairmore in order to make plaintiff lose his
4 wheelchair. (ECF No. 17 at 116.) This claim was not included in the original complaint.

5 The Eighth Amendment protects prisoners from inhumane methods of punishment and
6 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.
7 2006). Extreme deprivations are required to make out a conditions of confinement claim, and
8 only those deprivations denying the minimal civilized measure of life's necessities are sufficiently
9 grave to form the basis of an Eighth Amendment violation. Hudson v. McMillian, 503 U.S. 1, 9
10 (1992) (citations and quotations omitted). In order to state a claim for violation of the Eighth
11 Amendment, the plaintiff must allege facts sufficient to support a claim that prison officials knew
12 of and disregarded a substantial risk of serious harm to the plaintiff. Farmer v. Brennan, 511 U.S.
13 825, 847 (1994); Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels,
14 554 F.3d 807, 812-14 (9th Cir. 2009); Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

15 Plaintiff's allegations as to this claim are too vague and conclusory for the court to
16 determine whether plaintiff can allege facts demonstrating that each defendant knew of and
17 disregarded a substantial risk of serious harm to plaintiff in connection with these allegations.
18 However, if plaintiff can allege such facts, he may renew this claim in a new civil rights
19 complaint.

20 H. Interference with Mail

21 Plaintiff renewed his claims concerning mail interference and tampering. However, not
22 all of plaintiff's allegations concerning interference with his mail are clear. For example, in one
23 amended complaint, plaintiff states that unidentified individuals at DVI would open his letters
24 and read them, allegedly to "stop plaintiff from getting help." (ECF No. 17 at 67.) Specifically,
25 plaintiff claims that a letter he sent to the warden was removed from the mailbox. (Id.) In a
26 different complaint, plaintiff alleges that it took six months for him to gain approval to send trust
27 account funds to his girlfriend, delaying her Christmas gift. (ECF No. 17 at 98-99.) Plaintiff also
28 alleges that he received no mail from his family and friends and they received no mail from him

1 during the two years he was housed at DVI. (ECF No. 17 at 99; 124.) Plaintiff claims that
2 defendant Grave would remove plaintiff's outgoing mail from the box and take it to the
3 bathroom, and would slip plaintiff's incoming mail under plaintiff's door but the mail would just
4 be the envelope with no contents inside. Plaintiff alleges that the Bible studies were taken out of
5 the envelope and plaintiff was just given the envelope. (ECF No. 17 at 124.) Plaintiff also
6 alleges that defendant Gail Boyd erroneously returned books and letters from his Bible studies,
7 Global University School, and the Reader Service Center. (ECF No. 17 at 169.) Plaintiff claims
8 that defendant Boyd intentionally whited out parts of plaintiff's name so that incoming mail
9 would be returned. (ECF No. 17 at 169-70.)

10 Prisoners enjoy a First Amendment right to send and receive mail. Witherow v. Paff, 52
11 F.3d 264, 265 (9th Cir. 1995). Nonetheless, prison officials may institute procedures for
12 inspecting legal mail, which includes mail sent between attorneys and prisoners, see Wolff v.
13 McDonnell, 418 U.S. 539, 576-77 (1974), and mail sent from prisoners to the courts, see Royse v.
14 Superior Court, 779 F.2d 573, 574-75 (9th Cir. 1986). While the deliberate delay of legal mail
15 which adversely affects legal proceedings presents a cognizable claim for denial of access to the
16 courts, see Jackson v. Proconier, 789 F.2d 307, 311 (5th Cir. 1986), isolated incidents of mail
17 interference without any evidence of improper motive or resulting interference with the right to
18 counsel or access to the courts do not give rise to a constitutional violation. See Davis v. Goord,
19 320 F.3d 346, 351 (2d. Cir. 2003) (isolated incident of mail tampering usually insufficient to state
20 claim); Smith v. Maschner, 899 F.2d 940, 944 (10th Cir. 1990) (isolated incident of opening one
21 piece of legal mail in error does not rise to level of constitutional violation). Moreover, there
22 must be a "delicate balance" between prisoners' First Amendment rights and the discretion given
23 to prison administrators to govern the order and security of the prison. Thornburgh v. Abbott,
24 490 U.S. 401, 407-08 (1989). Prison officials have more leeway to regulate incoming than
25 outgoing mail because of the greater security risks inherent in material coming into a prison. Id.
26 at 413.

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1 i. Incoming Mail

2 As stated above, prisoners enjoy a First Amendment right to send and receive mail.
3 Witherow, 52 F.3d at 265 (citing Thornburgh, 490 U.S. at 407). If prison officials withhold mail,
4 a prisoner has a due process right to receive notice that the incoming mail is being withheld. See
5 Frost v. Symington, 197 F.3d 348, 353-54 (9th Cir. 1999). A prison, however, may adopt
6 regulations or practices which impinge on a prisoner's First Amendment rights as long as the
7 regulations are "reasonably related to legitimate penological interests." Turner v. Safley, 482
8 U.S. 78, 89 (1987). The Turner standard applies to regulations and practices concerning all
9 correspondence between prisoners and to regulations concerning incoming mail received by
10 prisoners from non-prisoners. Thornburgh, 490 U.S. at 413.

11 Prison officials have a responsibility to forward mail to inmates promptly. Bryan v.
12 Werner, 516 F.2d 233, 238 (3d Cir. 1975). Allegations that mail delivery was delayed for an
13 inordinate amount of time are sufficient to state a claim for violation of the First Amendment.
14 Antonelli v. Sheahan, 81 F.3d 1422, 1432 (7th Cir. 1996). However, a temporary delay or
15 isolated incident of delay does not violate a prisoner's First Amendment rights. Crofton v. Roe,
16 170 F.3d 957, 961 (9th Cir. 1999) (policy of diverting publications through property room
17 reasonably related to prison's interest in inspecting mail for contraband).

18 In this case, plaintiff alleges that he received no communications from his family and
19 friends during his two year incarceration at DVI, and did not receive any responses to his Bible
20 studies. Plaintiff identifies defendants Grave and Boyd as correctional officers who interfered
21 with plaintiff's incoming mail. Plaintiff's allegations as to defendants Grave and Boyd are
22 sufficient to state a cognizable civil rights claim. If plaintiff intends to pursue his claims alleging
23 interference with his incoming mail, plaintiff should raise such claims in one second amended
24 complaint, specifically identifying each defendant he alleges interfered with his incoming mail,
25 and identifying what mail, including from his family and friends, that he claims he did not
26 receive.

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1 ii. Outgoing Mail

2 With respect to outgoing correspondence from prisoners to non-prisoners, an exception to
3 the Turner standard applies. Because outgoing correspondence from prisoners does not, by its
4 very nature, pose a serious threat to internal prison order and security, there must be a closer fit
5 between any regulation or practice affecting such correspondence and the purpose it purports to
6 serve. Thornburgh, 490 U.S. at 411-12. Censorship of outgoing prisoner mail is justified if the
7 following criteria are met: (1) the regulation furthers “an important or substantial government
8 interest unrelated to the suppression of expression” and (2) “the limitation on First Amendment
9 freedoms must be no greater than is necessary or essential to the protection of the particular
10 governmental interest involved.” Procunier v. Martinez, 416 U.S. 396, 413 (1974), overturned on
11 other grounds by Thornburgh, 490 U.S. at 413-14.

12 Plaintiff does not plead sufficient facts to establish that his First Amendment rights have
13 been violated in connection with outgoing mail by defendants. Plaintiff cites two unrelated
14 incidents -- one incident where a letter to the warden was removed from the box, and a separate
15 incident where mail to his girlfriend was delayed. Moreover, in the latter incident, part of the
16 delay was due to procedures required to withdraw funds from plaintiff’s inmate trust account.
17 These two specific allegations, without more, fail to state a cognizable claim.

18 However, plaintiff may be able to state a claim as to outgoing mail to his family and
19 friends, if he can allege specific facts demonstrating that he presented to prison officials letters on
20 a regular basis that were never received by the intended recipients over a two year period.
21 Plaintiff must also identify the individuals responsible for such interference.

22 Accordingly, plaintiff has failed to demonstrate that the interception and delay of his
23 outgoing mail constitutes a violation of a constitutionally protected liberty interest. Denton v.
24 Bowman, 2008 WL 755798, *1 (S.D. Cal. March 19, 2008) (prisoner failed to show that delay in
25 processing his outgoing mail constituted a violation of his liberty interest). Plaintiff is granted
26 leave to amend and plead sufficient facts to state a claim for interference with his outgoing mail
27 in a second amended complaint filed in this action.

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1 V. Conclusion

2 As set forth above, because of the manner in which plaintiff filed his 233 page amended
3 complaint, the amended complaint must be dismissed. Plaintiff is granted leave to file a second
4 amended complaint in this action concerning defendants' alleged interference with plaintiff's mail
5 at DVI. Should plaintiff decide to pursue any of the other unrelated, but potentially cognizable,
6 claims that the court addressed above, plaintiff must raise those claims by filing a new complaint
7 in a new action.

8 If plaintiff chooses to file a second amended complaint concerning his interference with
9 mail claims, plaintiff must demonstrate how the conditions complained of have resulted in a
10 deprivation of plaintiff's federal constitutional or statutory rights. See Ellis v. Cassidy, 625 F.2d
11 227 (9th Cir. 1980). Also, the second amended complaint must allege in specific terms how each
12 named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is
13 some affirmative link or connection between a defendant's actions and the claimed deprivation.
14 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
15 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
16 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
17 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

18 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
19 make plaintiff's second amended complaint complete. Local Rule 220 requires that an amended
20 complaint be complete in itself without reference to any prior pleading. This is because, as a
21 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
22 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files a second amended complaint, the original
23 pleading no longer serves any function in the case. Therefore, in a second amended complaint, as
24 in an original complaint, each claim and the involvement of each defendant must be sufficiently
25 alleged. However, plaintiff is not obligated to re-file his exhibits. The exhibits that plaintiff
26 submitted on November 12, 2013, are now part of the court record and may be referred to by any
27 party.

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In accordance with the above, IT IS HEREBY ORDERED that:

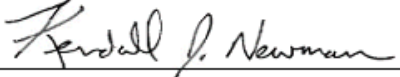
1. Plaintiff's amended complaint is dismissed.

2. Plaintiff is granted thirty days from the date of service of this order to file a second amended complaint that complies with the instant order, the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the second amended complaint must bear the docket number assigned this case, must be labeled "Second Amended Complaint," and must be filed on the form provided by the court; plaintiff must file an original of the second amended complaint; failure to file a second amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

3. The Clerk of the Court is directed to send plaintiff the form for filing a civil rights complaint pursuant to 42 U.S.C. § 1983.

Dated: April 21, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE