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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALLEN HAMMLER,
Plaintiff,
v.
C. DAVIS, et. al.,
Defendants.

No. 2:14-cv-2073 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. By order filed September 11, 2014, plaintiff was directed to file a completed affidavit in support of this request. ECF No. 5. Pursuant to the court’s order, plaintiff has submitted the requested documentation. ECF No. 6. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Motion To Proceed IFP

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). See ECF No. 6. Accordingly, the request to proceed in forma pauperis will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct

1 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and
2 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments
3 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.
4 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
5 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §
6 1915(b)(2).

7 Screening Requirements

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

13 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
14 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
15 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
16 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
17 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
18 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
19 Cir. 1989); Franklin, 745 F.2d at 1227.

20 A complaint must contain more than a "formulaic recitation of the elements of a cause of
21 action;" it must contain factual allegations sufficient to "raise a right to relief above the
22 speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "The pleading
23 must contain something more. . . than . . . a statement of facts that merely creates a suspicion [of]
24 a legally cognizable right of action." Id., quoting 5 C. Wright & A. Miller, Federal Practice and
25 Procedure § 1216, pp. 235-35 (3d ed. 2004). "[A] complaint must contain sufficient factual
26 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal,
27 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). "A claim has facial plausibility
28 when the plaintiff pleads factual content that allows the court to draw the reasonable inference

1 that the defendant is liable for the misconduct alleged.” Id.

2 In reviewing a complaint under this standard, the court must accept as true the allegations
3 of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740
4 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in
5 the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421(1969).

6 Summary of the Complaint

7 Plaintiff alleges that defendant C. Davis, a prison librarian at High Desert State Prison,
8 harassed plaintiff by repeatedly threatening to take away his “preferred legal user” (“PLU”) status
9 if he continued providing legal assistance to other inmates while in the prison library under PLU
10 status. ECF No. 1 at 3, 8-12. Plaintiff further alleges that Davis retaliated against plaintiff for
11 exercising his right of access to the courts when she solicited other inmates to threaten plaintiff.
12 ECF No. 1 at 3, 6-7, 12. Plaintiff alleges that Davis made “slanderous allegations” in front of
13 “the whole [prison] library” and damaged his reputation. ECF No. 1 at 6-7, 11. Plaintiff further
14 alleges that prison officials lost his CDCR 602 appeal forms in which he set forth the above
15 allegations, and prevented him from filing a replacement form. ECF No. 1 at 2. Plaintiff requests
16 that the court remove defendant Davis from her position as librarian at the B-2 prison library and
17 requests “any other redress” the court deems appropriate.¹ ECF No. 1 at 3.

18 Analysis

19 Harassment

20 “[V]erbal harassment or abuse . . . [alone] is insufficient to state a constitutional
21 deprivation under 42 U.S.C. 1983.” Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987)
22 (citation and internal quotation omitted). “A mere threat may not state a cause of action” under
23 the Eighth Amendment, even if it is a threat against exercising the right of access to the courts.
24 Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987) (per curiam); see also Corales v. Bennett, 567
25 F.3d 554, 564-65 (9th Cir. 2009). Verbal harassment intended to humiliate or endanger the
26 inmate, however, may violate the Constitution. See Somers v. Thurman, 109 F.3d 614, 622 (9th

27 _____
28 ¹ To the extent plaintiff seeks injunctive relief in the form of a court order directing the removal
of the prison librarian, the court is without jurisdiction to grant such a request.

1 Cir. 1997); Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996), amended by 135 F.3d 1318 (9th
2 Cir. 1998).

3 Here, plaintiff's allegations that Davis harassed plaintiff by repeatedly threatening to take
4 away his PLU status and soliciting other inmates to threaten him, without more, fails to state a
5 claim for relief. Plaintiff does not allege that Davis' conduct was intended to humiliate him or
6 "[was] calculated to and did cause" harm to plaintiff. See Keenan, 83 F.3d at 1092. Plaintiff's
7 claim will be dismissed but plaintiff will be given leave to amend.

8 Right of Access to the Courts

9 Prison inmates have a constitutionally protected right to access the courts in order
10 to bring challenges to their criminal convictions and to the conditions of their confinement.
11 Lewis v. Casey, 518 U.S. 343, 354-55 (1996). Prison officials may not actively interfere with an
12 inmate's ability to access the courts. Silva v. Di Vittorio, 658 F.3d 1090, 1102-03 (9th Cir.
13 2011). When a prisoner alleges such interference, he must demonstrate actual injury such as the
14 inability to meet a filing deadline or to present a non-frivolous claim. Lewis, 518 U.S. at 348-49,
15 352-53 & n.3; Nevada Dept. of Corr. v. Greene, 648 F.3d 1014, 1018 (9th Cir. 2011), cert.
16 denied, 132 S. Ct. 1823 (2012); Silva, 658 F.3d at 1102-03. Actual injury is a jurisdictional
17 requirement and may not be waived. Nevada Dept. of Corr., 648 F.3d at 1018 (citing Lewis,
18 518 U.S. at 349).

19 Relying on Johnson v. Avery, 393 U.S. 483 (1969), plaintiff appears to assert that the
20 constitutional right of access to the courts includes the unfettered right to provide legal assistance
21 to other inmates. See ECF No. 1 at 8. In Johnson, the Court invalidated a state prison regulation
22 that prohibited inmates from providing legal assistance to other inmates in the preparation of
23 petitions for post-conviction relief. 393 U.S. at 490. However, the Court recognized that:

24 [T]he State may impose reasonable restrictions and restraints upon
25 the acknowledged propensity of prisoners to abuse both the giving
26 and the seeking of assistance in the preparation of actions for relief:
27 for example, by limitations on the time and location of such
activities and the imposition of punishment for the giving or receipt
of consideration in connection with such activities.

28 Id. No such blanket prohibition against providing legal assistance to other inmates is alleged in

1 plaintiff's complaint. Rather, plaintiff's complaint and exhibits make clear that Davis
2 consistently informed plaintiff that, while in the library *under PLU status*, he could not assist
3 other inmates and could work solely on his own legal matters during that time. See ECF No. 1 at
4 8-10.

5 In any case, plaintiff's allegations fail to establish or allege an actual injury as a result of
6 Davis' conduct. Lewis v. Casey, 518 U.S. at 351-53. Plaintiff's allegations that Davis threatened
7 to take away plaintiff's PLU status if he did not do his work quietly and cease assisting other
8 inmates, without more, does not state a claim of denial of access to the courts. Plaintiff's claim
9 will be dismissed but plaintiff will be given leave to amend.

10 Retaliation

11 Retaliation by prison officials for the exercise of a prisoner's constitutional right of access
12 to the courts violates the federal constitution. Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir. 1995);
13 Schroeder v. McDonald, 55 F.3d 454, 461 (9th Cir. 1995); Black v. Lane, 22 F.3d 1395, 1402
14 (7th Cir. 1994); Woods v. Smith, 60 F.3d 1161, 1164 (5th Cir. 1995); Rizzo v. Dawson, 778 F.2d
15 527, 532 (9th Cir. 1985). In order to state a retaliation claim, a plaintiff must plead facts which
16 suggest that retaliation for the exercise of protected conduct was the "substantial" or "motivating"
17 factor behind the defendant's conduct. Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314
18 (9th Cir. 1989); Rizzo 778 F.2d at 532. The plaintiff must also plead facts which suggest an
19 absence of legitimate correctional goals for the conduct he contends was retaliatory. Pratt at 806
20 (citing Rizzo at 532). Verbal harassment alone is insufficient to state a claim. See Oltarzewski,
21 830 F.2d at 139 (internal quotation marks and citations omitted). Even threats of bodily injury
22 are insufficient to state a claim, because a mere naked threat is not the equivalent of doing the act
23 itself. See Gaut, 810 F.2d at 925.

24 To the extent plaintiff's retaliation claim is based on Davis' attempts to preclude him from
25 assisting other inmates while in the library under PLU status, plaintiff has failed to plead facts
26 which suggest an absence of legitimate correctional goals for Davis' conduct. Plaintiff's
27 complaint suggests that prison policy requires that inmates who are in the library under PLU
28 status are only allowed to work on their own legal affairs and may not use that time to assist

1 others, and that Davis was merely enforcing this policy. See ECF No. 1 at 8-10, 16.

2 To the extent plaintiff's retaliation claim is based on plaintiff receiving threats of physical
3 harm from other inmates at Davis' direction, these allegations are insufficient to state a claim for
4 relief because they are mere threats. Plaintiff's complaint demonstrates that during the
5 confrontation with the two other inmates, "physical altercation was . . . avoided." ECF No. 1 at
6 12. Plaintiff's claim will be dismissed but plaintiff will be given leave to amend.

7 Threats to Inmate Safety

8 If plaintiff intends to allege a separate claim based on threats to his safety, he is advised
9 that the Eighth Amendment requires that prison officials take reasonable measures for the safety
10 of prisoners. Farmer v. Brennan, 511 U.S. 825, 832 (1994). "[P]rison officials have a duty...to
11 protect prisoners from violence at the hands of other prisoners." Id. at 833. However, "not . . .
12 every injury suffered by one prisoner at the hands of another translates into constitutional liability
13 for prison officials responsible for the victim's safety." Id. at 834. "[A] prison official violates
14 the Eighth Amendment when two requirements are met. First, the deprivation alleged must be,
15 objectively, 'sufficiently serious;' a prison official's act or omission must result in the denial of
16 'the minimal civilized measure of life's necessities.'" Id. Second, a prison official must have a
17 'sufficiently culpable state of mind' ... [T]hat state of mind is one of 'deliberate indifference' to
18 inmate health or safety." Id. The prison official will be liable only if "the official knows of and
19 disregards an excessive risk to inmate health and safety; the official must both be aware of facts
20 from which the inference could be drawn that a substantial risk of serious harm exists, and he
21 must also draw the inference." Id. at 837.

22 Plaintiff alleges that Davis solicited other inmates to threaten plaintiff. ECF No. 1 at 6-7,
23 12. However, because plaintiff does not allege that he suffered any injury, plaintiff fails to allege
24 a sufficiently serious deprivation. Plaintiff's claim will be dismissed but plaintiff will have leave
25 to amend.

26 Defamation

27 Plaintiff alleges that defendant Davis "slandered" him by saying in front of other inmates
28 in the prison library that she did not want plaintiff to aid other prisoners and that she believed he

1 was using the library to “drum up business” because she heard that he charged large sums of
2 money to aid other inmates. ECF No. 1 at 11. In his exhibits, plaintiff includes a copy of a
3 CDCR 602 “Inmate/Parolee Appeal” form in which he alleges that, as a result of Davis’
4 statements, he suffered damage to his reputation as a jailhouse lawyer and activist for prisoner’s
5 rights. ECF No. 1 at 6-7.

6 If plaintiff intends to allege a defamation claim in his complaint, he is informed that injury
7 to reputation is not a liberty or property interest protected by the due process clause of the
8 Fourteenth Amendment, and therefore injury to reputation alone does not present an actionable
9 claim under section 1983. Cooper v. Dupnik, 924 F.2d 1520, 1532 (9th Cir.1991), citing Paul v.
10 Davis, 424 U.S. 693, 703 (1976). In order to state a claim for defamation under section 1983, a
11 plaintiff must allege loss of a recognizable property interest in conjunction with the allegation of
12 injury to reputation. Id. The Cooper court noted two ways that a plaintiff could meet this so-
13 called “stigma-plus” test:

14 One way is to allege that the injury to reputation caused the denial
15 of a federally protected right. Stevens v. Rifkin, 608 F.Supp. 710,
16 726–27 (N.D.Cal.1984) (where plaintiffs alleged that prosecutor
17 disseminated accusations to the press in an attempt to deprive
18 plaintiff of his Sixth Amendment right to an impartial jury panel,
19 this stated a claim for relief under section 1983). See also
20 Wisconsin v. Constantineau, 400 U.S. 433, 434 n. 2, 437, 91 S.Ct.
21 507, 508 n. 2, 510, 27 L.Ed.2d 515 (1971) (plaintiff stated cause of
22 action under section 1983 for due process violation where
23 defamatory act of posting an individual's name as having an
24 excessive drinking problem without prior hearing resulted in the
25 deprivation to that individual of the right previously held under
26 state law to purchase or obtain liquor); Marrero v. City of Hialeah,
27 625 F.2d 499, 517 (5th Cir.1980) (court held plaintiff stated a due
28 process violation under section 1983 where the alleged defamation
by the public official caused plaintiff to lose business goodwill, a
protected property interest in Florida), cert. denied, Rashkind v.
Marrero, 450 U.S. 913, 101 S.Ct. 1353, 67 L.Ed.2d 337 (1981).

A second basis for finding an actionable claim under section 1983
is where the plaintiff alleges the injury to reputation was inflicted in
connection with a federally protected right. Stevens, 608 F.Supp. at
727 (court held plaintiffs stated proper claim under section 1983
where defamatory statements were made in connection with alleged
unconstitutional arrest and prosecution). See also Gobel v.
Maricopa County, 867 F.2d 1201, 1205 (9th Cir.1989) (plaintiffs
properly alleged the kind of “defamation plus” injury necessary to
state a section 1983 claim where they alleged that the false
statements were made in connection with their illegal arrest); Board

1 of Regents v. Roth, 408 U.S. 564, 573, 92 S.Ct. 2701, 2707, 33
2 L.Ed.2d 548 (1972) (defamation in the course of termination of
3 public employment by the state sufficient to state cause of action
4 under section 1983).

4 Cooper v. Dupnik, 924 F.2d 1520, 1532 (9th Cir.1991) on reh'g, 963 F.2d 1220 (9th Cir.1992).

5 In this case, plaintiff has made no allegation that he has suffered any injury other than that
6 to his reputation, and, accordingly, has failed to allege a colorable defamation claim.

7 Prison Grievance Procedure

8 Plaintiff alleges that several of his CDCR 602 “Inmate/Parolee Appeal” forms have been
9 lost by defendant M. Calhoun or other prison officials and that his request to submit another form
10 raising the claims set forth in the missing forms was denied. ECF No. 1 at 2, 23-24. Plaintiff
11 alleges that he was not given a reason for the denial, other than “talk to Calhoun.” ECF No. 1 at
12 2. It is unclear from these allegations if plaintiff seeks to allege a distinct claim against defendant
13 Calhoun, or is merely attempting to explain a potential failure to exhaust administrative
14 remedies.² See ECF No. 1 at 2.

15 To the extent plaintiff seeks to allege a due process violation against defendant Calhoun
16 predicated on his mismanagement of a grievance filed by plaintiff, plaintiff is informed that
17 prisoners do not have a “separate constitutional entitlement to a specific prison grievance
18 procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003), citing Mann v. Adams, 855
19 F.2d 639, 640 (9th Cir. 1988). Even the non-existence of, or the failure of prison officials to
20 properly implement, an administrative appeals process within the prison system does not raise
21 constitutional concerns. Mann, 855 F.2d at 640. See also, Buckley v. Barlow, 997 F.2d 494, 495
22 (8th Cir. 1993); Flick v. Alba, 932 F.2d 728 (8th Cir. 1991). Azeez v. DeRobertis, 568 F. Supp.
23 8, 10 (N.D.Ill. 1982) (“[A prison] grievance procedure is a procedural right only, it does not
24 confer any substantive right upon the inmates. Hence, it does not give rise to a protected liberty
25 interest requiring the procedural protections envisioned by the fourteenth amendment”).

26
27 ² Failure to exhaust administrative remedies is an affirmative defense, meaning that a prisoner is
28 not required to plead and to demonstrate exhaustion in his or her complaint. See Jones v. Bock,
549 U.S. 199, 216 (2007).

1 Specifically, a failure to process a grievance does not state a constitutional violation. Buckley,
2 997 F.2d at 495. State regulations give rise to a liberty interest protected by the Due Process
3 Clause of the federal constitution only if those regulations pertain to “freedom from restraint” that
4 “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of
5 prison life.” Sandin v. Conner, 515 U.S. 472, 484 (1995). Plaintiff’s claim against defendant
6 Calhoun will be dismissed but plaintiff will be granted leave to amend.

7 Claims Against the Warden, Assistant Warden, and Director of the CDCR

8 As to the unnamed warden, the assistant warden, and the director of CDCR, plaintiff fails
9 to link the conduct of these officials to any alleged constitutional deprivation he has suffered.

10 The Civil Rights Act under which this action was filed provides as follows:

11 Every person who, under color of [state law] . . . subjects, or causes
12 to be subjected, any citizen of the United States . . . to the
13 deprivation of any rights, privileges, or immunities secured by the
14 Constitution . . . shall be liable to the party injured in an action at
15 law, suit in equity, or other proper proceedings for redress.

16 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
17 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
18 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
19 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
20 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or omits
21 to perform an act which he is legally required to do that causes the deprivation of which
22 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

23 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
24 their employees under a theory of respondeat superior and, therefore, when a named defendant
25 holds a supervisory position, the causal link between him and the claimed constitutional
26 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
27 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). Vague
28 and conclusory allegations concerning the involvement of official personnel in civil rights
violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

Here, plaintiff alleges only that the warden declined plaintiff’s request for a meeting, and

1 makes no specific allegations at all against the assistant warden or the director of the CDCR. See
2 ECF No. 1 at 11, 13. Plaintiff's claims against the warden, the assistant warden, and the director
3 of the CDCR each in their individual capacity will be dismissed. Plaintiff will have leave to
4 amend.

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

13 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
14 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
15 complaint be complete in itself without reference to any prior pleading. This is because, as a
16 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
17 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
18 longer serves any function in the case. Therefore, in an amended complaint, as in an original
19 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

20 Motion for Temporary Restraining Order and Preliminary Injunction

21 Plaintiff has also filed a motion for a temporary restraining order and a motion for
22 injunctive relief. ECF No. 7. The legal principles applicable to requests for injunctive relief,
23 such as a temporary restraining order or preliminary injunction, are well established. To prevail,
24 the moving party must show either a likelihood of success on the merits of the underlying
25 controversy and the possibility of irreparable injury, or that serious questions are raised and the
26 balance of hardships tips sharply in the movant's favor. See Coalition for Economic Equity v.
27 Wilson, 122 F.3d 692, 700 (9th Cir.1997); Oakland Tribune, Inc. v. Chronicle Publ'g Co., 762
28 F.2d 1374, 1376 (9th Cir.1985). The two formulations represent two points on a sliding scale

1 with the focal point being the degree of irreparable injury shown. See Oakland Tribune, 762 F.2d
2 at 1376. Under any formulation of the test, however, the moving party must demonstrate that
3 there exists a significant threat of irreparable injury. See id. In the absence of a significant
4 showing of possible irreparable harm, the court need not reach the issue of likelihood of success
5 on the merits. See id. The loss of money, or an injury whose measure of damages can be
6 calculated in terms of money, will not be considered irreparable. See id. at 1334–35.

7 The standard for a temporary restraining order is essentially the same. The purpose in
8 issuing a temporary restraining order is to preserve the status quo pending a more complete
9 hearing. The cases contain limited discussion of the standards for issuing a temporary restraining
10 order due to the fact that very few such orders can be appealed prior to the hearing on a
11 preliminary injunction. It is apparent however, that requests for temporary restraining orders are
12 governed by the same general standards that govern the issuance of a preliminary injunction. See
13 New Motor Vehicle Bd. v. Orrin W. Fox Co., 434 U.S. 1345, 1347 n. 2 (1977).

14 The Eastern District of California Local Rules impose additional requirements for a
15 motion for a temporary restraining order. First, the court will consider whether the moving party
16 could have sought relief by a noticed motion for a preliminary injunctive at an earlier date
17 without the necessity of seeking last-minute relief by motion for a temporary restraining order.
18 See Local Rule 231(b). Second, the moving party must provide specific documents to the court
19 in support of the requested temporary restraining order. See Local Rule 231(c). Additionally, for
20 a temporary restraining order/preliminary injunction, the plaintiff must provide a proposed order.
21 See id.

22 Finally, in cases brought by prisoners involving conditions of confinement, any temporary
23 restraining order or preliminary injunction must be narrowly drawn, extend no further than
24 necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive
25 means necessary to correct the harm. See 18 U.S.C. § 3626(a)(2).

26 A motion for injunctive relief must relate to the allegations in the complaint. If there is no
27 relation, it is not an injunctive relief situation. A party seeking preliminary injunctive relief “must
28 necessarily establish a relationship between the injury claimed in the party's motion and the

1 conduct asserted in the complaint. See Devose v. Herrington, 42 F.3d 470, 471 (8th Cir.1994);
2 see also De Beers Consol. Mines, Ltd., v. United States, 325 U.S. 212 (1945).

3 Plaintiff seeks a preliminary injunction and temporary restraining order asking the court to
4 enjoin defendants and “all other persons acting in concert” with them from precluding plaintiff
5 from mailing legal documents related to the underlying case. ECF No. 7 at 1-2. Plaintiff alleges
6 that certain unnamed correctional officers ignore his requests to send out legal mail and he is
7 unable to mail his documents until those officers are off duty. ECF No. 7 at 3-4. Plaintiff
8 requests that the court issue an order allowing him “to mail all legal documents from the B-yard
9 program office where it’s conveyance for mailing is to be overseen by none of less rank than a
10 sergeant.” ECF No. 7 at 2.

11 At this time, the court is unable to assess the likelihood of plaintiff’s success on the merits
12 as all of his claims in the underlying complaint have been dismissed with leave to amend.
13 Moreover, plaintiff has not demonstrated a significant threat of irreparable injury, and the request
14 seeks relief against those not named as defendants in the underlying (now dismissed) complaint.
15 The request will therefore be vacated without prejudice to the filing of a well-supported request or
16 motion for preliminary injunctive relief, should plaintiff proceed on colorable claims and any
17 defendant be served.

18 Request for Court Order Allowing Polygraph Examination

19 Plaintiff requests a court order allowing him to take a polygraph examination at his own
20 expense. ECF No. 8. Plaintiff is reminded that the court accepts the allegations of the complaint
21 as true. See Hospital Bldg. Co., 425 U.S. at 740. Therefore, plaintiff’s request is denied as
22 unnecessary.

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

- 24 1. Plaintiff’s request for leave to proceed in forma pauperis is GRANTED.
- 25 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
26 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
27 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
28 Director of the California Department of Corrections and Rehabilitation filed concurrently

1 herewith.

2 3. The complaint is dismissed for the reasons discussed above, with leave to file an
3 amended complaint within twenty-eight days from the date of service of this order. Failure to file
4 an amended complaint will result in a recommendation that the action be dismissed.

5 4. Plaintiff's motion for a preliminary injunction and temporary restraining (ECF No. 7)
6 order is vacated without prejudice.

7 5. Plaintiff's request for a court order allowing a polygraph examination (ECF No. 8) is
8 DENIED.

9 DATED: November 25, 2014

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11 ALLISON CLAIRE
12 UNITED STATES MAGISTRATE JUDGE
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