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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PHILLIP PAPPAS,

NO. C 09-3246 WHA (PR)

Plaintiff,

**ORDER GRANTING DEFENDANTS'  
MOTION TO SCREEN CASE AND  
DISMISSING CASE WITH LEAVE  
TO AMEND**

v.

W. S. WADKINS; W. J. HILL; I.  
GUERRA; J. LOZADO; W. B.  
CHILDRESS; R. HALL; NOLA  
GRANNIS; R. GOMEZ; GASPAR;  
DAVID MENDEZ; C. SEKULA; M.  
PRATTI; M. SOLARIO; VIDAURRI;  
E. MCCANT; F. A. RODRIGUEZ; J.  
HUTCHINS; GARZA; KEN CLARK;  
PIO ENRIQUEZ; STURGES; A.  
LOPEZ; R. VAN VUGT; K.  
SANTORO; J. PRUD'HOMME; D.  
SCHOTTGEN; L. SMITH, a.k.a. L.  
ZINANI; AHLIN; TOM EMIGH;  
PLOUGH; T. PRICE; D. L. PORTER;  
P. BRANNIN; K. ESTES; E.  
AGUIRRE; R. JORDT; CRAIN;  
SHAW; M. ROSAS; D. STOHL; D.  
DUVALL; S. CHILDRESS; F.  
NAVARETTE; WILSON; J.  
HOLINSKI, a.k.a. J. KAISER; E.  
CAMPOS; S. MARTIN;  
CHURLESON; DOWLING; D.  
TREVINO; L. CARTAGENA;  
MORENO; K. HIXON; G.  
CORNWALL; R. MANUEL; J.  
BATCHELOR; R. SADDI; G.  
ABREU;  
B. SWEENEY; C. RAMIREZ; R.  
IBARRA; R. VELASQUEZ; M.  
VIEIRA; M. ZUNIGA; Y. YEHUDA;  
G. GUERRERO; THORPE; TOMMY  
WAN; JONES, III; ANTHONY  
KANE;  
M. ORGAZAN; T. LINN;  
KIMBERELY A. SMITH; S.  
LABARE; W. RIVERA; J. WARD; K.  
ALLISON; LINNETTE AUSTEN; and  
SANDRA MACIEL,

1 Defendants.  
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3 **INTRODUCTION**

4 Plaintiff, an inmate at California State Prison-Solano in Vacaville, filed this case in  
5 Santa Clara County Superior Court. It was removed to this court by defendants Austin, Kane,  
6 LaBare, and Maciel. The removal was subsequently joined by defendants W. B. Childress, I.  
7 Guerra, G. Guerrero, W. J. Hill, J. Lozado, and M. Zuniga.<sup>1</sup> Defendants have filed a waiver of  
8 their right to reply to the complaint and a motion for the court to screen it. The motion  
9 (document 3) is **GRANTED**. The screening is performed below.

10 **DISCUSSION**

11 **A. STANDARD OF REVIEW**

12 Federal courts must engage in a preliminary screening of cases in which prisoners seek  
13 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
14 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims  
15 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
16 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro  
17 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699  
18 (9th Cir. 1990).

19 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the  
20 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the  
21 statement need only "give the defendant fair notice of what the . . . claim is and the grounds  
22 upon which it rests.'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).  
23 Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a  
24 plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than  
25 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not  
26 do. . . . Factual allegations must be enough to raise a right to relief above the speculative

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28 <sup>1</sup> When the word "defendants" is used below it refers to only the defendants who removed the case.

1 level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A  
2 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*  
3 at 1974.

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
5 (1) that a right secured by the Constitution or laws of the United States was violated, and (2)  
6 that the alleged deprivation was committed by a person acting under the color of state law.  
7 *West v. Atkins*, 487 U.S. 42, 48 (1988).

8 **B. LEGAL CLAIMS**

9 The complaint covers a wide variety of prison conditions at two different institutions  
10 where plaintiff was housed, the California Training Facility at the California Substance Abuse  
11 and Treatment Facility. The complaint is 147 pages long, not counting what appears to be  
12 hundreds of pages of attachments, contains 18 sections, and names 80 defendants, the majority  
13 of whom many of whom plaintiff has not provided a location. The complaint is extraordinary  
14 broad, and appears to touch upon everything plaintiff found objectionable between 2005 and  
15 2007, including allegations about retaliation, confiscation of legal materials, conspiracy,  
16 "cover-ups," interference with mail, limitations on access to the yard, the denial of parole, cell  
17 moves, job changes, disciplinary actions, the inmate appeals process, threats, "harassment,"  
18 "intimidation," and indifference to his medical needs, among a host of other allegations.

19 The complaint has several deficiencies that require an amended complaint to be filed.  
20 First, the complaint has several claims that are not properly joined under Federal Rule of Civil  
21 Procedure 20(a) concerning joinder of claims and defendants. Rule 20(a) provides that all  
22 persons "may be joined in one action as defendants if there is asserted against them jointly,  
23 severally, or in the alternative, any right to relief in respect of or arising out of the same  
24 transaction, occurrence, or series of transactions or occurrences and if any question of law or  
25 fact common to all defendants will arise in the action." As described above, plaintiff's claims  
26 cover a broad array of different incidents by different individuals at a minimum of two  
27 institutions over the course of approximately two years. In his amended complaint, plaintiff  
28 may only allege claims that (a) arise out of the same transaction, occurrence, or series of

1 transactions or occurrences and (b) present questions of law or fact common to all defendants  
2 named therein. Plaintiff may not include in a single complaint everything that has happened to  
3 him over the last four years in prison that he finds objectionable. He must choose what claims  
4 he wants to pursue that meet the joinder requirements; if he asserts improperly joined claims in  
5 his amended complaint, they will be dismissed.

6 Second, the complaint does not comply with the requirement that the averments be  
7 "simple, concise, and direct." Federal Rule of Civil Procedure 8(a) requires that the complaint  
8 set forth "a short and plain statement of the claim showing that the pleader is entitled to relief."  
9 Rule 8(e) requires that each averment of a pleading be "simple, concise, and direct," and the  
10 failure to adhere to this requirement may be the basis for dismissal. *McHenry v. Renne*, 84 F.3d  
11 1172, 1179 (9th Cir. 1996) (affirming dismissal of complaint that was "argumentative, prolix,  
12 replete with redundancy, and largely irrelevant"). The complaint here does not comply with  
13 Rule 8(e). There are not simple, concise and direct averments. Instead, the rambling factual  
14 allegations include unnecessary minutiae about dozens of interactions between plaintiff, other  
15 inmates and staff, and the complaint is replete with conclusory argument about retaliation,  
16 cover-ups and conspiracies.

17 Third, it appears that plaintiff has improperly included as defendants persons who did not  
18 more than fail to grant his administrative appeals. There is no constitutional right to a jail  
19 administrative appeal or grievance system. *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.1988);  
20 *see Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996) (prison grievance procedure is  
21 procedural right that does not give rise to protected liberty interest requiring procedural  
22 protections of Due Process Clause). Plaintiff had no federal constitutional right to a properly  
23 functioning appeal system. An incorrect decision on an administrative appeal or failure to  
24 handle it in a particular way therefore did not amount to a violation of his right to due process.  
25 The descriptions of his efforts to pursue inmate appeals should not be repeated in the amended  
26 complaint.

## 27 CONCLUSION


28 1. The complaint is **DISMISSED** with leave to amend, as indicated above, within thirty

1 days from the date of this order. The amended complaint must include the caption and civil  
2 case number used in this order (No. C 09-3246 WHA (PR)) and the words AMENDED  
3 COMPLAINT on the first page. Because an amended complaint completely replaces the  
4 original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v.*  
5 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the  
6 original complaint by reference. Failure to amend within the designated time and in accordance  
7 with this order will result in the dismissal of these claims.

8 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court  
9 informed of any change of address by filing with the clerk a separate paper headed "Notice of  
10 Change of Address." Papers intended to be filed in this case should be addressed to the clerk  
11 and not to the undersigned. Petitioner also must comply with the Court's orders in a timely  
12 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
13 pursuant to Federal Rule of Civil Procedure 41(b).

14 **IT IS SO ORDERED.**

15 Dated: October 20, 2009.

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18 WILLIAM ALSUP  
19 UNITED STATES DISTRICT JUDGE  
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**United States District Court**  
For the Northern District of California

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