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**United States District Court**  
For the Northern District of California

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

KENNETH W. GRAY,  
  
Plaintiff,  
  
v.

No. C 10-3474 WHA (PR)

**ORDER OF SERVICE; REFERRING  
CASE TO FEDERAL PRO BONO  
PROJECT**

R. SALAO; SERGEANT WILLIAMS;  
T. SMITH; CAPTAIN MUNIA;  
SERGEANT B. PETERSON;  
LIEUTENANT R.H. BOCELLA;  
CHIEF DEPUTY WARDEN B.  
HENDRICK; CAPTAIN G.  
BIAGGINI; PARK, M.S.W. ; DRUG  
TESTING COORDINATOR  
DAMONS;  
  
Defendants.

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**INTRODUCTION**

Plaintiff, a California prisoner proceeding pro se, has filed a civil rights complaint under 42 U.S.C. 1983 against employees of Salinas Valley State Prison (“SVSP”) where plaintiff is incarcerated. Plaintiff has been granted leave to proceed in forma pauperis in a separate order.

**STATEMENT**

Plaintiff alleges that on December 15, 2009, defendant T. Smith searched plaintiff’s cell and found a substance that Smith and other defendants believed to be heroin. Plaintiff informed them that it was artificial sweetener. Defendant R. Salao tested the substance that afternoon and, and the direction of defendant Williams, falsely indicated that it was a controlled substance instead of sweetener. Plaintiff was put into administrative segregation the next day pending an

1 investigation. At hearings that day and one week later, plaintiff reiterated that the substance  
2 was only sweetener, but defendants informed him that the substance was being tested in a lab  
3 and if the results were negative for drugs then plaintiff would be released. The lab results were  
4 returned to SVSP on February 24, 2010, and they indicated that the substance was not in fact  
5 drugs. Plaintiff was released from Administrative Segregation on April 1, 2010.

6 Plaintiff claims that defendants Williams, Salao and Smith were retaliating against him  
7 for the “many” administrative grievances that he has filed. He also claims that defendants  
8 violated his right to due process keeping him in administrative segregation for approximately  
9 three and a half months based on false evidence that the substance found in his cell was drugs.

## 10 ANALYSIS

### 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  
27 level.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A  
28 complaint must proffer “enough facts to state a claim for relief that is plausible on its face.” *Id.*

1 at 1986-87.

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

6 **B. LEGAL CLAIMS**

7 Plaintiff's allegations, when liberally construed, state cognizable claims for relief  
8 against defendants for violating his right to due process and for retaliating against him for his  
9 filing "many" inmate grievances in violation of his First Amendment rights.

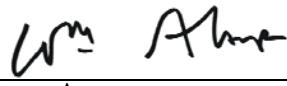
10 **CONCLUSION**

11 1. The clerk shall issue summons and the United States Marshal shall serve, without  
12 prepayment of fees, a copy of the complaint in this matter, the January 28, 2010 Order of  
13 Service, and a copy of this order upon defendants Investigative Squad Unit Officer # 5 R. Salao;  
14 Delta 7 Correctional Sergeant Williams; Correctional Officer T. Smith; Delta 7 Facility Captain  
15 Munia; Delta 7 Correctional Sergeant B. Peterson; Delta 7 Lieutenant R. Bocella; Chief Deputy  
16 Warden B. Hendrick; Delta Facility Captain G. Biaggini; Park, M.S.W; and Drug Testing  
17 Coordinator Damons at Salinas Valley State Prison. A courtesy copy of the complaint and this  
18 order shall also be mailed to the California Attorney General's Office.

19 2. Good and just cause appearing, plaintiff is referred to the Federal Pro Bono  
20 Project for location and of pro bono counsel. Upon an attorney being located to represent  
21 plaintiff, that attorney shall be appointed as counsel for plaintiff in this matter until further order  
22 of the court. All proceedings in this action, except the service of defendants as ordered herein,  
23 are stayed until four weeks from the date an attorney is appointed to represent plaintiff in this  
24 action.

25 **IT IS SO ORDERED.**

26 Dated: September 27, 2010.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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