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

KIRK DOUGLAS WILLIAMS,

Plaintiff,

v.

K. TILLEY,

Defendant.

No. C 12-4707 JSW (PR)

**ORDER DENYING MOTIONS  
TO SUPPLEMENT  
COMPLAINT, FOR  
EXTENSION OF TIME, TO  
COMPEL AND TO  
CORRESPOND; DENYING IN  
PART AND GRANTING IN  
PART MOTION TO DISMISS  
AND FOR SUMMARY  
JUDGMENT; GRANTING  
LEAVE TO FILE AMENDED  
COMPLAINT; SCHEDULING  
DISPOSITIVE MOTION  
BRIEFING**

(Docket Nos. 13, 14, 21, 22, 25)

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Plaintiff, a California prisoner proceeding pro se, filed this civil rights complaint in state court alleging that Defendant, an employee of Salinas Valley State Prison, violated Plaintiff’s constitutional rights. Defendant removed the case to this court. The Court reviewed the complaint pursuant to 28 U.S.C. § 1915A and found that, when liberally construed, it stated cognizable claims for violating his Eighth Amendment rights by denying him a meal, for violating his First Amendment rights by retaliating against him for filing administrative appeals, and for violating his constitutional right to access the courts by denying him administrative appeals forms.

1 Plaintiff has filed a motion to “supplement” his complaint with additional  
2 allegations against Defendant. The motion is DENIED because it would result in  
3 piecemeal complaints in which his claims are spread over multiple documents. Plaintiff  
4 may add his new claims to this action by including them in an amended complaint,  
5 however. Plaintiff is therefore granted leave to file an amended complaint on or before  
6 **May 14, 2013**. The amended complaint must include the caption and civil case number  
7 used in this order (No. C 12-4707 JSW (PR)) and the words “COURT-ORDERED  
8 FIRST AMENDED COMPLAINT” on the first page. Because an amended complaint  
9 completely replaces the original complaint, *see Ferdik v. Bonzelet*, 963 F.2d 1258, 1262  
10 (9th Cir. 1992), Plaintiff may not incorporate material from the original complaint by  
11 reference. Rather, he must include all of the claims and allegations, including those from  
12 the original complaint, that he wishes to pursue. Any claims not included in the amended  
13 complaint will no longer be part of this case. If Plaintiff does not file an amended  
14 complaint within the designated time and in accordance with this order, Plaintiff will not  
15 be allowed another opportunity to amend, the case will proceed solely on the basis of the  
16 cognizable claims in the original complaint, and he will not be given an opportunity to  
17 pursue the claims in the motion to supplement the case.

18 Defendant has filed a motion to dismiss or in the alternative for summary  
19 judgment. In the motion, Defendant argues in part that Plaintiff’s claim that he was  
20 denied a single meal does not state a cognizable Eighth Amendment violation because  
21 the harm alleged is de minimis. Defendant is correct. *See, e.g., Hudson v. McMillian*,  
22 503 U.S. 1, 8-10 (1992) (8th Amendment excludes from constitutional recognition de  
23 minimis uses of force); *Anderson v. County of Kern*, 45 F.3d 1310, 1314 (9th Cir. 1995).  
24 Accordingly, the claim is DISMISSED from the original complaint, and it will be  
25 dismissed from any amended complaint he files in accordance with the foregoing  
26 paragraph. As Plaintiff has been granted leave to file an amended complaint,  
27 Defendant’s motion is otherwise DENIED without prejudice to refile on or before **July**  
28 **14, 2013**. Plaintiff’s opposition, if any, will be due within **28 days** of the date any such

1 motion is filed, and Defendant shall file a reply brief within **14 days** of the date any  
2 opposition is filed. The provisions and warnings included in the prior scheduling order  
3 of October 25, 2012, remain in effect except as modified herein. In light of the  
4 foregoing, Plaintiff's motion to extend time to file an opposition to Defendant's motion  
5 is DENIED as unnecessary.

6 Plaintiff has filed a motion for permission to correspond with an inmate, Enrique  
7 Nava, whom he alleges was a witness to events giving rise to his claims but who is  
8 housed in a different prison. Plaintiff seeks non-confidential correspondence from Mr.  
9 Nava that is limited to the claims in this case. Defendant opposes the motion on the  
10 grounds that 15 Cal. Code Regs. § 3139 provides a procedure for Plaintiff to obtain  
11 permission for such correspondence from prison officials, but Plaintiff has not attempted  
12 to do so. In light of that procedure, Plaintiff's motion is DENIED at this time.  
13 Defendant shall forthwith inform Plaintiff how to follow the procedure outlined in the  
14 regulations in order to seek and obtain a non-confidential declaration from Mr. Nava  
15 about this case. If Plaintiff follows this procedure, prison officials shall allow Plaintiff to  
16 obtain such a declaration if Mr. Nava is willing to provide one.

17 Plaintiff's motion to compel is DENIED because he has not certified that he has  
18 met and conferred with Defendant in good faith, or attempted to do so, to resolve his  
19 discovery disputes before seeking the Court's intervention, as required by Federal Rule  
20 of Civil Procedure 37(a).

21 IT IS SO ORDERED.

22 DATED: April 15, 2013

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25 JEFFREY S. WHITE  
26 United States District Judge  
27  
28

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 WILLIAMS,

6 Plaintiff,

7 v.

8 TILLEY et al,

9 Defendant.  
10 \_\_\_\_\_/

Case Number: CV12-04707 JSW

**CERTIFICATE OF SERVICE**

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
12 Court, Northern District of California.

13 That on April 15, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
16 receptacle located in the Clerk's office.

17 Kirk Douglas Williams F-44523  
18 Salinas Valley State Prison  
19 P.O. Box 1050  
20 Soledad, CA 93960

21 Dated: April 15, 2013



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk

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