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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
6

7 ROBERT JURADO,  
8 Plaintiff,

9 v.

10 A RAMIREZ, et al.,  
11 Defendants.

Case No. [20-cv-08602-HSG](#)

**ORDER DISMISSING AMENDED  
COMPLAINT WITH LEAVE TO  
AMEND**

12  
13 Plaintiff, an inmate at San Quentin State Prison, has filed a *pro se* action pursuant to 42  
14 U.S.C. § 1983. His amended complaint (Dkt. No. 15) is now before the Court for review under 28  
15 U.S.C. § 1915A. For the reasons set forth below, the amended complaint is DISMISSED with  
16 leave to amend.

17 **DISCUSSION**

18 **A. Standard of Review**

19 A federal court must conduct a preliminary screening in any case in which a prisoner seeks  
20 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.  
21 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims  
22 that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek  
23 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),  
24 (2). *Pro se* pleadings must, however, be liberally construed. *See United States v. Qazi*, 975 F.3d  
25 989, 993 (9th Cir. 2020).

26 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the  
27 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not  
28 necessary; the statement need only “give the defendant fair notice of what the . . . claim is and the

1 grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).  
2 While Rule 8 does not require detailed factual allegations, it demands more than an unadorned,  
3 the-defendant-unlawfully-harmed-me accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009).  
4 A pleading that offers only labels and conclusions, or a formulaic recitation of the elements of a  
5 cause of action, or naked assertions devoid of further factual enhancement does not suffice. *Id.*  
6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a  
7 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
8 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487  
9 U.S. 42, 48 (1988).

10 **B. Amended Complaint**

11 The amended complaint names as defendants CDCR appeal examiner S. K. Hemenway  
12 and the following SQSP correctional officials: Investigative Services Unit A. Ramirez;  
13 correctional lieutenant Ralph R. Sheldon; correctional captain Nicole Avila; correctional  
14 lieutenant D. Ernst; associate warden Fouch; and warden Broomfield. Dkt. No. 15 at 5. The  
15 amended complaint alleges that “the staff/administration here in San Quentin St. Prison” kept him  
16 from his legal property which was housed in East Block Condemned Unit, thereby preventing  
17 Plaintiff from communicating with his lawyers to assist them in preparing his appeal. The  
18 amended complaint does not make specific allegations about what was done or not done by the  
19 named defendants.

20 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*, 518 U.S.  
21 343, 350 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977). The Ninth Circuit therefore has held  
22 that “prisoners have a right under the First and Fourteenth Amendments to litigate claims  
23 challenging their sentences or the conditions of their confinement to conclusion without *active*  
24 *interference* by prison officials.” *Silva v. Di Vittorio*, 658 F.3d 1090, 1102 (9th Cir. 2011),  
25 *overruled on other grounds as stated by Richey v. Dahne*, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015)  
26 (emphasis in original); *see id.* at 1103-04 (reversing district court and finding cognizable denial of  
27 access to courts claim based on prisoner’s allegations that he was repeatedly transferred between  
28 different facilities in order to hinder his ability to litigate his pending civil lawsuits, prison

1 officials seized and withheld all his legal files, and as a result of such actions several of his  
2 pending suits were dismissed).

3           However, the amended complaint fails to state a cognizable claim for denial of access to  
4 the court against the named defendants because it does not specify how each individual defendant  
5 participated in the alleged denial of access to the courts, and because its conclusory allegations are  
6 insufficient to allege an “actual injury.” Because it appears that Plaintiff may be able to correct  
7 the alleged deficiency, the Court DISMISSES the amended complaint with leave to amend. *See*  
8 *James v. Giles*, 221 F.3d 1074, 1077 (2000) (*pro se* litigants should be afforded opportunity to  
9 amend complaint to overcome deficiencies unless it clearly appears from complaint that deficiency  
10 cannot be overcome by amendment).

11           To assist Plaintiff in preparing the second amended complaint, the Court reviews some  
12 legal principles that may be relevant to Plaintiff’s claims.

13           First, Section 1983 liability may be imposed on an individual defendant only if the plaintiff  
14 can show that the defendant proximately caused the deprivation of a federally protected right. *See*  
15 *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). In filing a second amended complaint,  
16 Plaintiff should identify what each named defendant did (or did not do) that denied him access to  
17 the court, and state where and the violation (or inaction) occurred. He must be careful to allege  
18 facts showing the basis for liability for each individual defendant and should not refer to them as a  
19 group (e.g. “the defendants”). There is no respondent superior liability, or supervisory liability,  
20 under Section 1983, i.e. no liability under the theory that one is liable simply because he  
21 supervises a person who has violated a plaintiff’s rights. *See Taylor v. List*, 880 F.2d 1040, 1045  
22 (9th Cir. 1989). When a named defendant holds a supervisory position, the causal link between  
23 that named defendant and the claimed constitutional violation must be specifically alleged. *See*  
24 *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979). To state a claim for relief under Section 1983  
25 against a supervisor defendant, Plaintiff must allege some facts that would support a claim that  
26 (1) the supervisor defendant proximately caused the deprivation of rights of which plaintiff  
27 complains, *see Harris v. City of Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981); (2) the supervisor  
28 defendant failed to properly train or supervise personnel resulting in the alleged deprivation,

1 *Ybarra v. Reno Thunderbird Mobile Home Village*, 723 F.2d 675, 680 (9th Cir. 1984); (3) the  
 2 alleged deprivation resulted from custom or policy for which the supervisor defendant was  
 3 responsible, *see id.*; or (4) the supervisor defendant knew of the alleged misconduct and failed to  
 4 act to prevent future misconduct, *Taylor*, 880 F.2d at 1045. Vague and conclusory allegations  
 5 concerning the involvement of supervisory personnel in civil rights violations are not sufficient to  
 6 state a claim. *See Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). In addition, a  
 7 prison official’s denial of an inmate’s grievance generally does not constitute significant  
 8 participation in an alleged constitutional violation sufficient to give rise to personal liability under  
 9 Section 1983. *See, e.g., Wilson v. Woodford*, No. 1:05-cv-00560-OWW-SMS, 2009 WL  
 10 839921, at \*6 (E.D. Cal. Mar. 30, 2009) (ruling against prisoner on administrative complaint does  
 11 not cause or contribute to constitutional violation). A prisoner has no constitutional right to an  
 12 effective grievance or appeal procedure. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir.  
 13 2003) (holding that prisoner has no constitutional right to effective grievance or appeal  
 14 procedure); *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988) (“There is no legitimate claim of  
 15 entitlement to a grievance procedure.”).

16 Second, to establish a claim for violation of the right of access to the courts, the prisoner  
 17 must prove that there was an inadequacy in the prison’s legal access program that caused him an  
 18 actual injury. *See Lewis*, 518 U.S. at 349-51. To prove an actual injury, the prisoner must show  
 19 that the inadequacy in the prison’s program hindered his efforts to pursue a non-frivolous claim  
 20 concerning his conviction or conditions of confinement. *See id.* at 351, 354-55. Examples of  
 21 impermissible hindrances include: a prisoner whose complaint was dismissed for failure to satisfy  
 22 some technical requirement which, because of deficiencies in the prison’s legal assistance  
 23 facilities, he could not have known; and a prisoner who had “suffered arguably actionable harm”  
 24 that he wished to bring to the attention of the court, but was so stymied by the inadequacies of the  
 25 library that he was unable even to file a complaint. *Id.* Mere delay in filing papers would not be  
 26 enough, for example, if the papers were nevertheless timely filed or accepted and considered by  
 27 the court. *See Hudson v. Robinson*, 678 F.2d 462, 466 (3d Cir. 1982). Actual injury is a  
 28 jurisdictional requirement that flows from the standing doctrine and may not be waived. *Nev.*

1 *Dep't of Corrections v. Greene*, 648 F.3d 1014, 1018 (9th Cir. 2011) (citing *Lewis*, 518 U.S. at  
2 349). It is “actual prejudice with respect to contemplated or existing litigation, such as the  
3 inability to meet a filing deadline or to present a claim.” *Lewis*, 518 U.S. at 348. Plaintiff states  
4 that he was prevented from assisting counsel with preparing his appeal. However, the amended  
5 complaint does not specify how long Plaintiff was without his legal property and how this denial  
6 of access caused “actual injury” to his appeal. In preparing his second amended complaint,  
7 Plaintiff should specify how long he was denied his legal property and how this denial affected his  
8 ability to pursue his appeal, such as missed deadlines.

9 **CONCLUSION**

10 For the foregoing reasons, the Court orders as follows. The amended complaint is  
11 dismissed with leave to amend to address the deficiencies identified above. Within **twenty-eight**  
12 **(28) days** of the date of this order, Plaintiff shall file a second amended complaint that addresses  
13 the identified deficiencies. The second amended complaint must include the caption and civil case  
14 number used in this order, Case No. C 20-08602 HSG (PR) and the words “SECOND AMENDED  
15 COMPLAINT” on the first page. If using the court form complaint, Plaintiff must answer all the  
16 questions on the form in order for the action to proceed. An amended complaint completely  
17 replaces the previous complaints. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 925 (9th Cir.  
18 2012). Accordingly, Plaintiff must include in his amended complaint all the claims he wishes to  
19 present and all of the defendants he wishes to sue, and may not incorporate material from the prior  
20 complaints by reference. Failure to file a second amended complaint in accordance with this order  
21 in the time provided will result in dismissal of this action without further notice to Plaintiff. The  
22 Clerk shall include two copies of the court’s complaint form with a copy of this order to Plaintiff.

23 **IT IS SO ORDERED.**

24 Dated: 3/31/2021

25   
26 HAYWOOD S. GILLIAM, JR.  
27 United States District Judge  
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