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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RUBEN M. DAVIS,
CDCR # C-23494

Plaintiff,

vs.

E. LOYA; MATTHEW RESLER; JOSHUA
ROCHA; R. FREGOSO,

Defendants.

Civil 10cv1606 MMA (MDD)
No.

ORDER:

**(1) GRANTING MOTION FOR
PERMISSION FOR REMOVAL OF
EXHIBITS;**

**(2) DISMISSING DEFENDANTS
SMALL, CATE, OCHOA, JANDA,
TRUJILLO, STRATTON,
EDWARDS, BELTRAN, DAVIS,
JIMENEZ, BETTENCOURT,
GARCIA, RUTLEDGE,
RODRIGUEZ, MATA, MANNING
AND ADAMS;**

**(3) DISMISSING CLAIMS FOR
FAILING TO STATE A CLAIM
PURSUANT TO 28 U.S.C. §§
1915(e)(2) & 1915A; AND**

**(4) DIRECTING USMS TO EFFECT
SERVICE OF REMAINING CLAIMS
AND DEFENDANTS FOUND IN
SECOND AMENDED COMPLAINT**

I. PROCEDURAL HISTORY

On July 29, 2010, Plaintiff, a state inmate currently incarcerated at the California State Prison - Los Angeles County located in Lancaster, California, and proceeding pro se, filed a

1 civil rights Complaint pursuant to 42 U.S.C. § 1983 along with another inmate, Eric Lindfors.
2 In addition, both Plaintiffs filed Motions to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28
3 U.S.C. § 1915(a). The Court denied Plaintiff Davis’ Motion for Leave to Proceed IFP, severed
4 claims and parties and dismissed the action pursuant to 28 U.S.C. § 1915A. *See* Oct. 12, 2010
5 Order at 4-5. After granting Plaintiff several extensions of time, Plaintiff Davis filed his First
6 Amended Complaint along with a renewed Motion for Leave to Proceed IFP on December 23,
7 2010. The Court granted Plaintiff’s Motion to Proceed IFP and sua sponte dismissed his First
8 Amended Complaint for failing to state a claim upon which relief could be granted. *See* Feb.
9 27, 2011 Order at 5-6. Plaintiff was granted leave to file a Second Amended Complaint and
10 cautioned that any Defendants not named and claims not re-alleged in his Amended Complaint
11 would be deemed to have been waived. *Id.* (citing *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.
12 1987)). On May 9, 2011, Plaintiff filed his Second Amended Complaint (“SAC”) along with
13 a “Motion for Permission for Removal of All Exhibits from Previous Pleadings to Attach to
14 Amended Pleading Herein” [ECF No. 20].

15 In his Second Amended Complaint, Plaintiff no longer names Ochoa, Janda, Trujillo,
16 Stratton, Beltran, Davis, Jimenez, Bettencourt, Garcia, Rutledge, Rodriguez, Mata and Manning
17 as Defendants. *See* SAC at 1-3. Accordingly, those Defendants are **DISMISSED** from this
18 action. *King*, 814 F.2d at 565.

19 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

20 The Prison Litigation Reform Act (“PLRA”)’s amendments to 28 U.S.C. § 1915 also
21 obligate the Court to review complaints filed by all persons proceeding IFP and by those, like
22 Plaintiff, who are “incarcerated or detained in any facility [and] accused of, sentenced for, or
23 adjudicated delinquent for, violations of criminal law or the terms or conditions of parole,
24 probation, pretrial release, or diversionary program,” “as soon as practicable after docketing.”
25 *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Under these provisions, the Court must sua
26 sponte dismiss any prisoner civil action and all other IFP complaints, or any portions thereof,
27 which are frivolous, malicious, fail to state a claim, or which seek damages from defendants who
28 are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-

1 27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir.
2 2000) (§ 1915A).

3 **A. Fourteenth Amendment Due Process claims**

4 Plaintiff alleges that his due process rights were violated during his disciplinary hearing
5 because several correctional officers falsified rules violation reports which led to Plaintiff being
6 sentenced to Administrative Segregation (“Ad-Seg”). “The requirements of procedural due
7 process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s
8 protection of liberty and property.” *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). State
9 statutes and prison regulations may grant prisoners liberty interests sufficient to invoke due
10 process protections. *Meachum v. Fano*, 427 U.S. 215, 223-27 (1976). However, the Supreme
11 Court has significantly limited the instances in which due process can be invoked. Pursuant to
12 *Sandin v. Conner*, 515 U.S. 472, 483 (1995), a prisoner can show a liberty interest under the
13 Due Process Clause of the Fourteenth Amendment only if he alleges a change in confinement
14 that imposes an “atypical and significant hardship . . . in relation to the ordinary incidents of
15 prison life.” *Id.* at 484 (citations omitted); *Neal v. Shimoda*, 131 F.3d 818, 827-28 (9th Cir.
16 1997).

17 In this case, Plaintiff has failed to establish a liberty interest protected by the Constitution
18 because he has not alleged, as he must under *Sandin*, facts related to the conditions or
19 consequences of his placement in Ad-Seg which show “the type of atypical, significant
20 deprivation [that] might conceivably create a liberty interest.” *Id.* at 486. For example, in
21 *Sandin*, the Supreme Court considered three factors in determining whether the plaintiff
22 possessed a liberty interest in avoiding disciplinary segregation: (1) the disciplinary versus
23 discretionary nature of the segregation; (2) the restricted conditions of the prisoner’s
24 confinement and whether they amounted to a “major disruption in his environment” when
25 compared to those shared by prisoners in the general population; and (3) the possibility of
26 whether the prisoner’s sentence was lengthened by his restricted custody. *Id.* at 486-87.

27 Therefore, to establish a due process violation, Plaintiff must first show the deprivation
28 imposed an atypical and significant hardship on him in relation to the ordinary incidents of

1 prison life. *Sandin*, 515 U.S. at 483-84. Plaintiff has failed to allege any facts from which the
2 Court could find there were atypical and significant hardships imposed upon him as a result of
3 the Defendants' actions. Plaintiff must allege "a dramatic departure from the basic conditions"
4 of his confinement that would give rise to a liberty interest before he can claim a violation of due
5 process. *Id.* at 485; *see also Keenan v. Hall*, 83 F.3d 1083, 1088-89 (9th Cir. 1996), *amended*
6 *by* 135 F.3d 1318 (9th Cir. 1998). He has not; therefore the Court finds that Plaintiff has failed
7 to allege a liberty interest in remaining free of Ad-seg, and thus, has failed to state a due process
8 claim. *See May*, 109 F.3d at 565; *Hewitt*, 459 U.S. at 466; *Sandin*, 515 U.S. at 486 (holding that
9 placing an inmate in administrative segregation for thirty days "did not present the type of
10 atypical, significant deprivation in which a state might conceivably create a liberty interest.").

11 **B. Failure to protect claims**

12 The only claims against Defendants Edwards and Adams appear to be that they allegedly
13 failed to protect him from the search and set him up to be falsely accused of having an inmate
14 weapon. A "failure to protect claim" arises from the Eighth Amendment's prohibition against
15 cruel and unusual punishment requires that prison officials act reasonably in protecting inmates
16 from violence suffered at the hands of other prisoners. *Farmer*, 511 U.S. at 833; *Berg v.*
17 *Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986). However, to state a failure to protect claim,
18 Plaintiff must allege facts sufficient to show that Defendants were "deliberately indifferent," that
19 they were aware of, but nevertheless consciously disregarded an excessive risk to his health or
20 safety. *Farmer*, 511 U.S. at 834. Here, Plaintiff's "injury" is not an excessive risk to his health
21 or safety but rather an allegedly manufactured disciplinary charge that led to him spending time
22 in Ad-Seg. Thus, Plaintiff has failed to state an Eighth Amendment claim, or any claim, against
23 Defendants Edwards and Adams.

24 **C. Religious claims**

25 Plaintiff also states that he is bringing a "Freedom of Religion" claim. (SAC at 4.)
26 However, Plaintiff offers no other specific factual allegations nor does he clarify whether he
27 intends to bring these claims under the First Amendment or pursuant to the Religious Land Use
28 and Institutionalized Persons Act ("RLUIPA").

1 As to either Plaintiff's potential First Amendment or RLUIPA claims, he fails to allege
2 facts sufficient to state a claim. "The right to exercise religious practices and beliefs does not
3 terminate at the prison door." *McElyea v. Babbitt*, 833 F.2d 196, 197 (9th Cir. 1987) (per
4 curiam). In order to implicate the Free Exercise Clause of the First Amendment, the Plaintiff
5 must show that their belief is "sincerely held" and "rooted in religious belief." *See Shakur v.*
6 *Schiro*, 514 F.3d 878, 884 (citing *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994)).

7 In addition to First Amendment protections, the Religious Land Use and Institutionalized
8 Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1 *et. seq.*, provides:

9 No government shall impose a *substantial burden on the religious exercise*
10 of a person residing in or confined to an institution . . . even if the burden results
11 from a rule of general applicability, unless the government demonstrates that
12 imposition of the burden on that person – [¶] (1) is in furtherance of a *compelling*
governmental interest; and [¶] (2) is the *least restrictive means* of furthering that
13 compelling governmental interest.

14 42 U.S.C. § 2000cc-1(a) (emphasis added); *see also San Jose Christian College v. Morgan Hill*,
15 360 F.3d 1024, 1033-34 (9th Cir. 2004) ("RLUIPA 'replaces the void provisions of RFRA' . . .
16 and prohibits the government from imposing 'substantial burdens' on 'religious exercise' unless
17 there exists a compelling governmental interest and the burden is the least restrictive means of
18 satisfying the governmental interest.").

19 RLUIPA defines religious exercise to include "any exercise of religion, whether or not
20 compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A); *San Jose*
21 *Christian College*, 360 F.3d at 1034. The party alleging a RLUIPA violation carries the initial
22 burden of demonstrating that a governmental practice constitutes a substantial burden on his
23 religious exercise. *See* 42 U.S.C. §§ 2000cc-1(a); 2000cc-2(b) ("[T]he plaintiff shall bear the
24 burden of persuasion on whether the law (including a regulation) or government practice that
25 is challenged by the claim substantially burdens the plaintiff's exercise of religion.")). Thus, the
26 Court **DISMISSES** Plaintiff's First Amendment religious claims and RLUIPA claims.

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1 **D. Access to Court claims**

2 Plaintiff also claims that he is bringing an access to courts claim without any additional
3 factual allegations. (See SAC at 4.) Prisoners do “have a constitutional right to petition the
4 government for redress of their grievances, which includes a reasonable right of access to the
5 courts.” *O’Keefe v. Van Boening*, 82 F.3d 322, 325 (9th Cir. 1996); accord *Bradley v. Hall*, 64
6 F.3d 1276, 1279 (9th Cir. 1995). In *Bounds*, 430 U.S. at 817, the Supreme Court held that “the
7 fundamental constitutional right of access to the courts requires prison authorities to assist
8 inmates in the preparation and filing of meaningful legal papers by providing prisoners with
9 adequate law libraries or adequate assistance from persons who are trained in the law.” *Bounds*
10 *v. Smith*, 430 U.S. 817, 828 (1977). To establish a violation of the right to access to the courts,
11 however, a prisoner must allege facts sufficient to show that: (1) a nonfrivolous legal attack on
12 his conviction, sentence, or conditions of confinement has been frustrated or impeded, and (2)
13 he has suffered an actual injury as a result. *Lewis v. Casey*, 518 U.S. 343, 353-55 (1996). An
14 “actual injury” is defined as “actual prejudice with respect to contemplated or existing litigation,
15 such as the inability to meet a filing deadline or to present a claim.” *Id.* at 348; see also *Vandelft*
16 *v. Moses*, 31 F.3d 794, 796 (9th Cir. 1994); *Sands v. Lewis*, 886 F.2d 1166, 1171 (9th Cir. 1989);
17 *Keenan v. Hall*, 83 F.3d 1083, 1093 (9th Cir. 1996).

18 Here, Plaintiff has failed to alleged any actions with any particularity that have *precluded*
19 his pursuit of a non-frivolous direct or collateral attack upon either his criminal conviction or
20 sentence or the conditions of his current confinement. See *Lewis*, 518 U.S. at 355 (right to
21 access to the courts protects only an inmate’s need and ability to “attack [his] sentence[], directly
22 or collaterally, and ... to challenge the conditions of [his] confinement.”); see also *Christopher*
23 *v. Harbury*, 536 U.S. 403, 415 (2002) (the non-frivolous nature of the “underlying cause of
24 action, whether anticipated or lost, is an element that must be described in the complaint, just
25 as much as allegations must describe the official acts frustrating the litigation.”). Moreover,
26 Plaintiff has not alleged facts sufficient to show that he has been actually injured by any specific
27 defendant’s actions. *Lewis*, 518 U.S. at 351.

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1 In short, Plaintiff has not alleged that “a complaint he prepared was dismissed,” or that
2 he was “so stymied” by any individual defendant’s actions that “he was unable to even file a
3 complaint,” direct appeal or petition for writ of habeas corpus that was not “frivolous.” *Lewis*,
4 518 U.S. at 351; *Christopher*, 536 U.S. at 416 (“like any other element of an access claim[,] ...
5 the predicate claim [must] be described well enough to apply the ‘nonfrivolous’ test and to show
6 that the ‘arguable’ nature of the underlying claim is more than hope.”). Therefore, Plaintiff’s
7 access to courts claims must be dismissed for failing to state a claim.

8 **E. Respondeat Superior**

9 Finally, Plaintiff continues to name Cate and Small as Defendants but fails to set forth
10 sufficient factual allegations with regard to these Defendants in the body of Plaintiff’s Second
11 Amended Complaint. Thus, it appears that Plaintiff seeks to hold these Defendants liable in
12 their supervisory capacity. However, there is no respondeat superior liability under 42 U.S.C.
13 § 1983. *Palmer v. Sanderson*, 9 F.3d 1433, 1437-38 (9th Cir. 1993). Instead, “[t]he inquiry into
14 causation must be individualized and focus on the duties and responsibilities of each individual
15 defendant whose acts or omissions are alleged to have caused a constitutional deprivation.” *Leer*
16 *v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71
17 (1976)). In order to avoid the respondeat superior bar, Plaintiff must allege personal acts by each
18 individual Defendant which have a direct causal connection to the constitutional violation at
19 issue. *See Sanders v. Kennedy*, 794 F.2d 478, 483 (9th Cir. 1986); *Taylor v. List*, 880 F.2d 1040,
20 1045 (9th Cir. 1989).

21 Supervisory prison officials may only be held liable for the allegedly unconstitutional
22 violations of a subordinate if Plaintiff sets forth allegations which show: (1) how or to what
23 extent they personally participated in or directed a subordinate’s actions, and (2) in either acting
24 or failing to act, they were an actual and proximate cause of the deprivation of Plaintiff’s
25 constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). As currently pleaded,
26 however, Plaintiff’s First Amended Complaint fails to set forth facts which might be liberally
27 construed to support an individualized constitutional claim against these Defendants.

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1 **F. Remaining Defendants**

2 As for Defendants Rocha, Resler, Fregoso and Loya, the Court finds Plaintiff's
3 allegations against them sufficient to survive the sua sponte screening required by 28 U.S.C.
4 §§ 1915(e)(2) and 1915A(b).¹ See *Lopez*, 203 F.3d at 1126-27. Accordingly, the Court finds
5 Plaintiff is entitled to U.S. Marshal service on his behalf. See 28 U.S.C. § 1915(d) ("The officers
6 of the court shall issue and serve all process, and perform all duties in [IFP] cases.");
7 FED.R.CIV.P. 4(c)(3) ("[T]he court may order that service be made by a United States marshal
8 or deputy marshal ... if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C.
9 § 1915.").

10 **III CONCLUSION AND ORDER**

11 Good cause appearing, **IT IS HEREBY ORDERED that:**

12 1. Plaintiff's Motion for Permission for Removal of Exhibits [ECF No. 20] is
13 **GRANTED**. The Clerk of Court is directed to remove the Exhibits attached to Plaintiff's
14 original Complaint and re-attach these Exhibits to Plaintiff's Second Amended Complaint.

15 2. Defendants Ochoa, Janda, Trujillo, Stratton, Beltran, Davis, Jimenez, Bettencourt,
16 Garcia, Rutledge, Rodriguez, Mata and Manning are **DISMISSED** from this action. *King*, 814
17 F.2d at 565.

18 3. Plaintiff's Fourteenth Amendment due process claims, Eighth Amendment failure
19 to protect claims, access to courts claim and religious claims are **DISMISSED** for failing to state
20 a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2) & § 1915A(b).

21 4. All claims against Defendants Small, Cate, Edwards and Adams are **DISMISSED**
22 for failing to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2) &
23 § 1915A(b).

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28 ¹ Plaintiff is cautioned that "the sua sponte screening and dismissal procedure is cumulative of,
and not a substitute for, any subsequent Rule 12[] motion that [a defendant] may choose to bring."
Teahan v. Wilhelm, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

1 **IT IS FURTHER ORDERED** that:

2 5. The Clerk shall issue a summons as to Plaintiff's Second Amended Complaint
3 [ECF No. 18] and **Exhibits** upon Defendants **Rocha, Resler, Fregoso and Loya** and shall
4 forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each Defendant. In
5 addition, the Clerk shall provide Plaintiff with a copy of this Order and a copy of his Second
6 Amended Complaint, Exhibits and the summons so that he may serve Defendants. Upon receipt
7 of this "IFP Package," Plaintiff is directed to complete the Form 285s as completely and
8 accurately as possible, and to return them to the United States Marshal according to the
9 instructions provided by the Clerk in the letter accompanying his IFP package. Upon receipt,
10 the U.S. Marshal shall serve a copy of the Second Amended Complaint, Exhibits and summons
11 upon Defendants as directed by Plaintiff on the USM Form 285s. All costs of service shall be
12 advanced by the United States. *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).

13 5. Defendants are thereafter **ORDERED** to reply to Plaintiff's Second Amended
14 Complaint within the time provided by the applicable provisions of Federal Rule of Civil
15 Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted
16 to "waive the right to reply to any action brought by a prisoner confined in any jail, prison, or
17 other correctional facility under section 1983," once the Court has conducted its sua sponte
18 screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a preliminary
19 determination based on the face on the pleading alone that Plaintiff has a "reasonable
20 opportunity to prevail on the merits," the defendant is required to respond).


21 6. Plaintiff shall serve upon the Defendants or, if appearance has been entered by
22 counsel, upon Defendants' counsel, a copy of every further pleading or other document
23 submitted for consideration of the Court. Plaintiff shall include with the original paper to be
24 filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy
25 of any document was served on Defendants, or counsel for Defendants, and the date of service.
26 Any paper received by the Court which has not been filed with the Clerk or which fails to
27 include a Certificate of Service will be disregarded.

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1 7. Plaintiff shall not be limited in the amount of photocopies in this matter as the
2 Court has found them “necessary to advance litigation.” Cal.Regs. Title 15 § 3162(c).

3 **IT IS SO ORDERED.**

4 DATED: June 9, 2011

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6 Hon. Michael M. Anello
7 United States District Judge

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