

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA**

**Wright v. Deforest**

Wright · No. 2:24-cv-0420 CSK P · Decided June 23, 2025

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**OPINION**

(PC) Wright v. Deforest

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 ATHELSTAN A. WRIGHT, No. 2:24-cv-0420 CSK P

12 Plaintiff, 13 v. ORDER 14 M. DEFOREST, et al., 15 Defendants. 16 17 Plaintiff is a state  
prisoner proceeding pro se and in forma pauperis. Plaintiff’s amended 18 complaint is before the  
Court. As discussed below, plaintiff is granted an opportunity to proceed 19 on the claims  
identified as cognizable, or he may elect to file a second amended complaint.

20 I. SCREENING STANDARDS

21 The court is required to screen complaints brought by prisoners seeking relief against a 22  
governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
23 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally  
24 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that  
seek 25 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)  
(1), (2). 26 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. 27  
Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
28 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
1 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
2 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully 3  
pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
4 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
5 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably 6  
meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at  
7 1227.

8 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain  
9 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the 10  
defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic

11 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). 12 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a 13 formulaic recitation of the elements of a cause of action;” it must contain factual allegations 14 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555. 15 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the 16 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v. 17 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal 18 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as 19 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the 20 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 21 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

## 22 II. THE CIVIL RIGHTS ACT

23 To state a claim under § 1983, a plaintiff must demonstrate: (1) the violation of a federal 24 constitutional or statutory right; and (2) that the violation was committed by a person acting under 25 the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Jones v. Williams, 297 F.3d 26 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the 27 facts establish the defendant’s personal involvement in the constitutional deprivation or a causal 28 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation. 1 See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Johnson v. Duffy, 588 F.2d 740, 743-44 2 (9th Cir. 1978). That is, plaintiff may not sue any official on the theory that the official is liable 3 for the unconstitutional conduct of his or her subordinates. Ashcroft v. Iqbal, 556 U.S. 662, 679 4 (2009). The requisite causal connection between a supervisor’s wrongful conduct and the 5 violation of the prisoner’s constitutional rights can be established in a number of ways, including 6 by demonstrating that a supervisor’s own culpable action or inaction in the training, supervision, 7 or control of his subordinates was a cause of plaintiff’s injury. Starr v. Baca, 652 F.3d 1202, 8 1208 (9th Cir. 2011).

## 9 III. PLAINTIFF’S AMENDED COMPLAINT

10 Plaintiff’s allegations are based on incidents that took place at High Desert State Prison 11 (“HDSP”). (ECF No. 11.) In his first claim, plaintiff alleges defendants M. Deforest and A. 12 Albrecht authored a false rules violation report (“RVR”) against plaintiff in retaliation for 13 plaintiff filing administrative grievances against defendants A. Albrecht, D. Jodin and M. 14 Murphy, which resulted in plaintiff being unlawfully held in administrative segregation (“ad seg”) 15 for 97 days. (ECF No. 11 at 5-10.) Plaintiff was found not guilty of the RVR on June 6, 2024. 16 (Id. at 9.) In addition to being housed in ad seg, plaintiff was deprived of good time credits; lost 17 eligibility for minimum custody; lost his job as a plumber; lost his wife to divorce because of the 18 false charges and possibility of getting more time in prison; could not be considered for 1170 19 resentencing for positive programming due to false charges; was placed on close custody status 20 for one year; and could not receive conjugal visits. (Id. at 10.) 21 In his second claim,

plaintiff alleges that on September 19, 2022, plaintiff submitted a 22 grievance in which he requested that defendant R. St. Andre intervene to stop staff misconduct 23 and retaliation by defendants A. Albrecht, D. Jodin and M. Murphy. (Id. at 11.) In addition, 24 while plaintiff was in ad seg, he wrote to defendant R. St. Andre and requested release from ad 25 seg based on plaintiff's right to file grievances. (Id. at 12.) Plaintiff contends defendant St. 26 Andre failed to correct the retaliatory misconduct. (Id.) Plaintiff cites the same injuries as those 27 set forth in claim one. (Id. at 14.) 28 /// 1 In his third claim, plaintiff alleges that defendants B. Jodin, M. Murphy, and A. Albrecht 2 improperly conducted a cell search by searching only plaintiff's cell, and argues that if there was 3 an active investigation, defendants should have searched all the cells. (Id. at 15.) Plaintiff also 4 alleges that defendants B. Jodin, M. Murphy, and A. Albrecht retaliated against plaintiff for filing 5 a grievance concerning the September 8, 2022 cell search by removing all of plaintiff's personal 6 property from his cell and throwing some of it over the tier into an orange bin rather than properly 7 gathering the property for alleged inspection for contraband. (Id.) Plaintiff also alleges he was 8 falsely charged with an RVR alleging plaintiff extorted peace officers using threats of staff 9 allegations and civil suits. (Id. at 15-18.) Plaintiff alleges that on January 10, 2023, defendants 10 A. Albrecht and D. Jodin summoned plaintiff to the HDSP program office to discuss plaintiff's 11 grievances, where they secretly recorded the conversation with the malicious intent to falsely 12 accuse plaintiff of extortion. (Id. at 17-18.) As a result, plaintiff was placed in ad seg based on 13 false documents. Plaintiff reiterated his retaliation claim against defendant A. Albrecht from the 14 first claim. (Id. at 18-19.) Further, on January 23, 2023, while housed in ad seg, plaintiff 15 received another RVR authored by defendant C. Griffith, which could affect plaintiff's term, 16 claiming plaintiff falsified a grievance plaintiff "filed on defendant A. Albrecht for falsely 17 logging a report against plaintiff to retaliate as defendant A. Albrecht stated she would 'fuck us' 18 (plaintiff) on 9-14-22." (Id. at 19-20.) Plaintiff's grievance was granted, but he was still 19 punished for exercising his First Amendment rights. (Id. at 20.) Plaintiff alleges violations of the 20 First, Eighth, and Fourteenth Amendments, as well as libel/defamation, California Government 21 Code Sections 845.4 and Penal Code Sections 2600 and 1170. (Id. at 15, 20.) As injury, plaintiff 22 claims false reports were entered into the Strategic Offender Management System ("SOMS") 23 with the intent to cause plaintiff harm and danger and to cover up misconduct; mental damages, 24 severe headaches and stress related issues due to retaliation. (Id.) 25 Finally, in his fourth claim, plaintiff alleges that on January 23, 2023, while housed in ad 26 seg, plaintiff was served an RVR (#726187) for "falsification of a document which could affect 27 term," authored by defendant C. Griffith. (Id. at 21.) Plaintiff claims the allegedly false 28 document was a grievance (# 346850) filed by plaintiff and granted by the office of appeals. 1 Plaintiff claims this false RVR violated plaintiff's access to the courts, and his right to file 2 grievances and be free from retaliation. (Id.) On December 30, 2023 [sic], plaintiff filed a 3 grievance (#346850) for a dangerous contraband RVR (#7223905) which was granted in 4 plaintiff's favor, yet defendant filed the RVR against

plaintiff after the office of appeals granted 5 plaintiff's grievance. On February 19, 2023, plaintiff was found guilty of RVR #7262187 and 6 given restrictions for punitive punishment while already in ad seg. (Id. at 21-22.) Plaintiff 7 appealed RVR #7262187 and was found not guilty by the Associate Warden. (Id. at 22.) 8 Plaintiff alleges that defendant C. Griffith knowingly and intentionally entered into CDCR SOMS 9 a false report with the intent to inflict punitive punishment while plaintiff was already in ad seg, 10 "violating plaintiff's protected conduct and due process of law." (Id.) Plaintiff claims there was 11 no evidence to support the RVR. (Id.) Plaintiff alleges violations of the First, Eighth and 12 Fourteenth Amendments. (Id. at 21.) 13 As relief, plaintiff seeks a declaratory judgment, injunctive relief, and money damages. 14 (Id. at 23-26.)

#### 15 IV. DISCUSSION

16 A. Eleventh Amendment Bars Official Capacity Claims 17 Plaintiff sues all of the named defendants in their individual and official capacities. (ECF

18 No. 11 at 2.) Claims for damages against the state, its agencies, or its officers for actions 19 performed in their official capacities are barred under the Eleventh Amendment, unless the state 20 waives its immunity. *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). Section 1983 does not 21 abrogate the states' Eleventh Amendment immunity from suit. See *Quern v. Jordan*, 440 U.S. 22 332, 344-45 (1979); see also *Hafer v. Melo*, 502 U.S. 21, 30 (1991) (clarifying that the Eleventh 23 Amendment does not bar suits against state officials sued in their individual capacities, nor does it 24 bar suits for prospective injunctive relief against state officials sued in their official capacities). 25 Therefore, plaintiff's claims for monetary damages against all of the defendants in their official 26 capacities are barred by the Eleventh Amendment and must be dismissed. 27 /// 28 /// 1 B. Cognizable Claims 2 The Court reviewed plaintiff's amended complaint and, for the limited purposes of 3 § 1915A screening, finds that it states the following potentially cognizable claims: 4 • Retaliation claims against defendants M. Deforest, A. Albrecht, and D. Jodin in 5 violation of the First Amendment (claims one and three) based on plaintiff's 6 claims that M. Deforest, A. Albrecht and D. Jodin contributed to and authored a 7 false rules violation report ("RVR") in 2023 against plaintiff in retaliation for 8 plaintiff filing administrative grievances against defendants A. Albrecht, D. Jodin 9 and M. Murphy. 10 • Retaliation claims against defendants D. Jodin, M. Murphy and A. Albrecht in 11 violation of the First Amendment, based on their actions in September 2022 12 (claim three). 13 • Eighth Amendment claims against defendants M. Deforest, A. Albrecht, and 14 D. Jodin based on plaintiff's placement and retention in administrative 15 segregation in 2023 for 97 days based on the false RVR (claims one and three). 16 • Eighth Amendment claims against defendant R. St. Andre based on plaintiff's 17 placement and retention in administrative segregation in January 2023 until his 18 release in April 2023, and failure to intervene to correct staff misconduct (claim 19 two).

20 See 28 U.S.C. § 1915A.

21 C. Noncognizable Claims 22 For the reasons stated below, the Court finds that the remainder of

the amended complaint 23 does not state cognizable claims against defendants M. Deforest, A. Albrecht, D. Jodin, 24 M. Murphy, and R. St. Andre. 25 1. Claim One 26 Although plaintiff also cited a Fourteenth Amendment violation against defendants 27 M. Deforest and A. Albrecht, plaintiff set forth no facts supporting a Fourteenth Amendment 28 claim. To the extent he contends his retaliation claims also support a Fourteenth Amendment due 1 process claim, plaintiff is mistaken. A due process claim is subsumed by the First Amendment 2 and does not state a separate claim. See *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (“Where a 3 particular Amendment provides an explicit textual source of constitutional protection against a 4 particular sort of government behavior, that Amendment, not the more generalized notion of 5 “substantive due process,” must be the guide for analyzing such a claim.”) (internal quotes and 6 citation omitted). Plaintiff also marked “access to courts” as an issue.<sup>1</sup> But plaintiff identifies no 7 actual injury he sustained to his court access. Rather, plaintiff’s allegations in his first claim are 8 solely based on the First and Eighth Amendments. Thus, plaintiff’s Fourteenth Amendment and 9 access to the courts claim against defendants M. Deforest and A. Albrecht in plaintiff’s first claim 10 should be dismissed. 11 2. Claim Two 12 In the second claim, plaintiff also alleges violations of the First and Fourteenth 13 Amendments by defendant R. St. Andre. However, there are no allegations that defendant R. St. 14 Andre retaliated against plaintiff or violated plaintiff’s due process rights. Indeed, plaintiff 15 concedes defendant R. St. Andre did neither. (ECF No. 11 at 11.) Plaintiff’s allegations against 16 defendant R. St. Andre are based on alleged violations of the Eighth Amendment and 17 R. St. Andre’s alleged failure to intervene to correct staff misconduct. Thus, plaintiff’s First and 18 Fourteenth Amendment claims against defendant R. St. Andre in claim two should be dismissed. 19 3. Claim Three 20 a. No Equal Protection Claim 21 Plaintiff alleges his right to equal protection was violated when defendants B. Jodin, M. 22 Murphy, and A. Albrecht searched only plaintiff’s cell, and not all of the cells, which he alleges 23 was required if there was an active investigation for contraband. (ECF No. 11 at 15.) 24 1 Prisoners have a constitutional right of access to the courts. *Lewis v. Casey*, 518 U.S. 343, 346 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977), limited in part on other grounds by *Lewis*, 25 518 U.S. at 354. The right of access to the courts is limited to non-frivolous direct criminal appeals, habeas corpus proceedings, and § 1983 actions, and requires a prisoner to show that he 26 suffered an “actual injury,” “actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim.” See *Lewis*, 518 U.S. at 348-27 49, 353 n.3, 354-55; see also *Alvarez v. Hill*, 518 F.3d 1152, 1155 n.1 (9th Cir. 2008) (noting that “[f]ailure to show that a ‘non-frivolous legal claim had been frustrated’ is fatal” to a claim for 28 denial of access to legal materials) (citing *Lewis*, 518 U.S. at 353 & n.4). 1 The Equal Protection Clause of the Fourteenth Amendment requires that persons who 2 are similarly situated be treated alike. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 3 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). “This does not mean, however, 4 that all prisoners must receive identical treatment and resources.” *Hartmann v. California Dep’t 5 of Corr. & Rehab.*, 707

F.3d 1114, 1123 (9th Cir. 2013) (citations omitted). Prisoners are not a protected class for purposes of an equal protection claim. See *Taylor v. Delatoore*, 281 F.3d 844, 7849 (9th Cir. 2002) (indigent prisoners are not a protected class for purposes of stating an equal protection claim). Prisoners must provide “facts plausibly showing that the defendants acted with an intent or purpose to discriminate against [them] based upon membership in a protected class.” 10 *Id.* (internal quotation marks and citations omitted). In the alternative, plaintiff must demonstrate that similarly situated individuals were intentionally treated differently without a rational relationship to a legitimate state purpose. *Engquist v. Oregon Department of Agr.*, 553 U.S. 591, 13601-02 (2008); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 592 (9th Cir. 2008); *North Pacifica LLC v. City of Pacifica*, 526 F.3d 15478, 486 (9th Cir. 2008). 16 Here, plaintiff does not allege that he was a member of a protected class, or that his cell 17 was searched because of plaintiff’s protected status. Rather, plaintiff claims that the cell was 18 searched due to an alleged search for contraband. Although plaintiff appears to suggest that the 19 alleged contraband search was conducted under false pretenses, he includes no facts connecting 20 the search to plaintiff’s protected status or showing it was without a legitimate state purpose. 21 Plaintiff has not alleged facts demonstrating that he was intentionally discriminated against on the 22 basis of his membership in a protected class, or that he was intentionally treated differently than 23 other similarly situated inmates without a rational relationship to a legitimate state purpose. 24 Thus, plaintiff fails to state a claim for violation of his right to equal protection, and the equal 25 protection claim should be dismissed. 26 b. No Libel/Defamation Claim 27 Initially in claim three, plaintiff alleges violations of the First, Eighth and Fourteenth 28 Amendments, retaliation and “libel/defamation.” (ECF No. 11 at 15.) As noted above, the Court 1 found that plaintiff stated cognizable First and Eighth Amendment violations against defendants 2 M. Deforest, A. Albrecht, and D. Jodin. However, claims of defamation or libel do not rise to the 3 level of a federal constitutional violation. See *Paul v. Davis*, 424 U.S. 693, 699-701 (1976) 4 (holding defamation is not actionable under § 1983); *Hernandez v. Johnson*, 833 F.2d 1316, 1319 5 (9th Cir. 1987) (holding that libel and slander claims are precluded by Paul); *Whatley v. Gray*, 62018 WL 828200, at \*2 (S.D. Cal. Feb. 8, 2018); *Sadler v. Dutton*, 2017 WL 3217119, at \*6 (D. 7 Mont. June 1, 2017) (same), report and recommendation adopted, 2017 WL 3219479 (D. Mont.

8 July 28, 2017). Thus, plaintiff’s libel/defamation claims should be dismissed.

9 c. No State Law Claims 10 At the end of claim three, plaintiff writes “violating the plaintiff’s 1st, 8th, 14th 11 Amendment; Cal. Gov. Code 845.4; PC 2600, Section 1170.” (ECF No. 11 at 20.) But as 12 plaintiff was previously informed, criminal statutes do not give rise to civil liability. *Allen v. 13 Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006). Further, “[t]o the extent that the 14 violation of a state law amounts to the deprivation of a state-created interest that reaches beyond 15 that guaranteed by the federal Constitution, [s]ection 1983 offers no redress.” *Sweaney v. Ada 16 County*, 119 F.3d 1385, 1391 (9th Cir. 1997) (quoting *Lovell v. Poway Unified*

Sch. Dist., 90 17 F.3d 367, 370 (9th Cir. 1996)); see also *Nurre v. Whitehead*, 580 F.3d 1087, 1092 (9th Cir. 2009) 18 (section 1983 claims must be premised on violation of federal constitutional right). 19 Finally, the Court declines to construe plaintiff's allegations in claim three as attempting 20 to raise supplemental state law claims because plaintiff failed to allege compliance with the 21 California Government Claims Act as to each claim. See Cal. Gov't Code § 810 et seq. 22 Thus, plaintiff's Fourteenth Amendment, defamation/libel or other putative state law 23 claims should be dismissed without prejudice. 24 D. Unrelated Claims -- Claims Three and Four Against Defendant C. Griffith 25 Plaintiff's claims against defendant C. Griffith took place on January 24, 2023, after the 26 retaliation claims against the remaining defendants, and involve a grievance and RVR that did not 27 involve the remaining defendants. Thus, plaintiff's claims against defendant C. Griffith are not 28 properly raised in the same action. Rule 21 of the Federal Rules of Civil Procedure provides: 1 Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add 2 or drop a party. The court may also sever any claim against a party. 3 Fed. R. Civ. P. 21. Rule 20(a) provides that all persons may be joined in one action as defendants 4 if "any right to relief is asserted against them jointly, severally, or in the alternative with respect 5 to or arising out of the same transaction, occurrence, or series of transactions or occurrences" and 6 "any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 7 20(a)(2); see also *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) ("Unrelated claims against 8 unrelated defendants belong in different suits"). If unrelated claims are improperly joined, the 9 court may dismiss them without prejudice. Fed. R. Civ. P. 21; 7 *Alan Wright, Arthur Miller & 10 Mary Kay Kane, Richard Marcus, Federal Practice and Procedure* § 1684 (3d ed. 2012); *Michaels 11 Building Co. v. Ameritrust Co.*, 848 F.2d 674, 682 (6th Cir. 1988) (affirming dismissing under 12 Rule 21 of certain defendants where claims against those defendants did not arise out of the same

13 transaction or occurrences, as required by Rule 20(a)). Here, plaintiff's putative claim against 14 defendant C. Griffith arose from a different incident involving a different grievance and different 15 RVR than the RVR resulting in his placement in ad seg in January 2023, as well as a different 16 defendant, and no question of fact involving defendant C. Griffith would be common to all of the 17 defendants named herein. Therefore, plaintiff's claims against defendant C. Griffith are not 18 properly joined in this action. 19 Where parties have been misjoined, the court may drop a party or sever the claims against 20 that party. Fed. R. Civ. P. 21. "[D]istrict courts who dismiss rather than sever must conduct a 21 prejudice analysis, including 'loss of otherwise timely claims if new suits are blocked by statutes 22 of limitations.'" *Rush v. Sport Chalet, Inc.*, 779 F.3d 973, 975 (9th Cir. 2015) (quoting *DirecTV, 23 Inc. v. Leto*, 467 F.3d 842, 846-47 (3d Cir. 2006)).

24 Because 42 U.S.C. § 1983 does not have its own statute of limitations, district courts 25 apply California's statute of limitations for personal injury actions and California's laws 26

regarding equitable tolling, except to the extent any of these laws is inconsistent with federal law. 27 See *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). California’s statute of limitations for 28 personal injury actions is two years. See Cal. Civ. Proc. Code § 335.1; *Maldonado v. Harris*, 370 1 F.3d 945, 954-55 (9th Cir. 2004). Such limitation period is statutorily tolled for a period of two 2 years for a person who is “imprisoned on a criminal charge, or in execution under the sentence of 3 a criminal court for a term less than for life.” Cal. Civ. Proc. Code § 352.1. Thus, a prisoner 4 serving a term less than life in California may have four years to file a federal claim pursuant to 5 section 1983. See *Cato v. Darst*, 2019 WL 2249636, at \*2 (E.D. Cal. May 23, 2019), findings and 6 recommendations adopted, 2019 WL 13366552 (E.D. Cal. Aug. 2, 2019). 7 Here, because the unrelated claims against defendant C. Griffith are based on the 8 subsequent January 24, 2023 RVR, plaintiff will not be prejudiced by the dismissal of the 9 unrelated claims, without prejudice, from this action. According to CDCR records, plaintiff is 10 eligible for parole consideration in June 2026.<sup>2</sup> Because plaintiff is not serving a sentence of life 11 without parole, he is entitled to the additional statutory tolling period of two years to file his 12 federal claim under section 1983. See *Cato*, 2019 WL 2249636, at \*2. Thus, plaintiff may have 13 four years from the date his claim against defendant C. Griffith accrued to file a civil rights action 14 against defendant C. Griffith. Consequently, plaintiff may pursue such claim, if at all, in a 15 separate, timely filed action. See also *George*, 507 F.3d at 607 (“Unrelated claims against 16 unrelated defendants belong in different suits”). 17 Further, because the amended complaint does not clearly state a cognizable claim against 18 defendant C. Griffith, the Court finds that severance is inappropriate. Plaintiff’s allegations 19 against defendant Griffith remain unclear. Plaintiff does not allege that defendant Griffith issued 20 the false RVR in retaliation for plaintiff’s protected conduct. Rather, plaintiff vaguely alleges it 21 was issued in violation of due process, but includes no facts demonstrating how the RVR violated 22 due process. (ECF No. 11 at 20.) In addition, plaintiff confirms that he subsequently appealed 23 the RVR and was found not guilty. Thus, it is unclear what injury plaintiff may have sustained 24 from the allegedly false RVR. Plaintiff claims defendant Griffith entered the false report into 25 2 This information was obtained from the CDCR Inmate Locator website, <https://ciris.mt.cdcr.ca.gov/> (accessed June 17, 2025). The Court may take judicial notice of 26 public records available on online inmate locators. See *United States v. Basher*, 629 F.3d 1161, 27 1165 (9th Cir. 2011) (taking judicial notice of Bureau of Prisons’ inmate locator available to the public); see also *Foley v. Martz*, 2018 WL 5111998, at \*1 (S.D. Cal. Oct. 19, 2018) (taking 28 judicial notice of CDCR’s inmate locator). 1 SOMS, but it is unclear whether the report was removed following the grant of plaintiff’s 2 grievance by the office of appeals. Thus, this Court finds severance is not an appropriate remedy. 3 See *Coleman*, 232 F.3d at 1297 (courts have broad discretion regarding severance). 4 Accordingly, the Court finds that plaintiff’s unrelated claims against defendant C. Griffith 5 should be dismissed without prejudice.

## 6 V. PLAINTIFF’S OPTIONS

7 A. First Option 8 Plaintiff may proceed forthwith to serve defendants M. Deforest, R. St. Andre,



D. Jodin, 9 M. Murphy and A. Albrecht and pursue his claims against only those defendants, as set forth 10 above, or he may delay serving any defendant and attempt to rectify the deficiencies identified 11 above. If plaintiff elects to proceed forthwith against defendants M. Deforest, R. St. Andre, and 12 D. Jodin, M. Murphy and A. Albrecht, against whom he stated potentially cognizable claims for 13 relief, then within thirty days plaintiff must so elect on the appended form. In this event, the 14 Court will construe plaintiff's election as consent to dismissal of (a) the claims for money 15 damages against all the named defendants in their official capacities, (b) the unrelated claim 16 against defendant C. Griffith, and (c) the noncognizable claims against the defendants identified 17 above, all without prejudice. Under this option, plaintiff does not need to file a second amended 18 complaint. 19 B. Other Option 20 Or, plaintiff may delay serving any defendant and attempt to state additional cognizable 21 claims against defendants M. Deforest, R. St. Andre, D. Jodin, M. Murphy and A. Albrecht. If 22 plaintiff elects to attempt to file a second amended complaint, he has thirty days to do so. 23 Any second amended complaint must show the federal court has jurisdiction, the action is 24 brought in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It 25 must contain a request for particular relief. Plaintiff must identify as a defendant only persons 26 who personally participated in a substantial way in depriving plaintiff of a federal constitutional 27 right. See Johnson, 588 F.2d at 743 (a person subjects another to the deprivation of a 28 constitutional right if he does an act, participates in another's act, or omits to perform an act he is 1 legally required to do that causes the alleged deprivation). 2 A district court must construe a pro se pleading "liberally" to determine if it states a claim 3 and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an 4 opportunity to cure them. See Lopez, 203 F.3d at 1130-31. While detailed factual allegations are 5 not required, "[t]hreadbare recitals of the elements of a cause of action, supported by mere 6 conclusory statements, do not suffice." Ashcroft, 556 U.S. at 678 (citing Bell Atlantic, 550 U.S. 7 at 555). Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim to 8 relief that is plausible on its face.'" Ashcroft, 556 U.S. at 678 (quoting Bell Atlantic, 550 U.S. at 9 570). 10 A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the 11 defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for 12 more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a 13 defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. 14 15 Ashcroft, 556 U.S. at 678 (citations and quotation marks omitted). Although legal conclusions 16 can provide the framework of a complaint, they must be supported by factual allegations, and are 17 not entitled to the assumption of truth. Id. 18 An amended complaint must be complete in itself without reference to any prior pleading. 19 Local Rule 220; see Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) 20 ("an 'amended complaint supersedes the original, the latter being treated thereafter as non- 21 existent.'" (internal citation omitted)). Once plaintiff files a second amended complaint, the 22

original and amended complaints are superseded. Plaintiff is not granted leave to add new 23 claims or new defendants. In addition, because plaintiff is pursuing claims related to incidents 24 that occurred in two different years, plaintiff should specifically identify the date of the act or 25 omission as to each named defendant.

## 26 VI. ORDERS

27 Accordingly, IT IS HEREBY ORDERED that: 28 1. The allegations in the amended complaint are sufficient at least to state potentially 1 | cognizable claims as follows: (a) First Amendment retaliation claims against defendants M. 2 || Deforest, A. Albrecht, and D. Jodin (claims one and three, 2023); (b) First Amendment retaliation 3 | claims against defendants D. Jodin, M. Murphy and A. Albrecht (claim three, 2022); (c) Eighth 4 | Amendment claims against defendants M. Deforest, A. Albrecht, and D. Jodin (claims one and 5 || three, 2023), and (d) Eighth Amendment claim against defendant R. St. Andre and failure to 6 || intervene to correct staff misconduct (claim two). See 28 U.S.C. § 1915A. If plaintiff chooses to 7 || proceed solely as to such claims, plaintiff shall so indicate on the attached form and return it to 8 | the court within thirty days from the date of this order. In this event, the Court will construe 9 || plaintiffs election to proceed forthwith as consent to an order dismissing the defective claims 10 || identified above without prejudice. 11 2. The following claims are dismissed with leave to amend: (a) plaintiff's Fourteenth 12 || Amendment and access to the courts claim raised against defendants M. Deforest and A. Albrecht 13 || (claim one); (b) First and Fourteenth Amendment claims against defendant R. St. Andre (claim 14 || two); and (c) equal protection claims against defendants B. Jodin, M. Murphy, and A. Albrecht 15 | (claim three). Within thirty days of service of this order, plaintiff may file a second amended 16 || complaint to attempt to remedy the deficiencies described above. Plaintiff is not required to 17 | amend. 18 3. Failure to comply with this order will result in a recommendation that this action 19 || proceed solely on the cognizable claims identified above. 20 21 | Dated: June 23, 2025 A aA Aan Spe |

CHI SOO KIM

23 UNITED STATES MAGISTRATE JUDGE

24 | MAVrig0420.1402 25 26 27 28 14 1 2 3

4 UNITED STATES DISTRICT COURT

5 FOR THE EASTERN DISTRICT OF CALIFORNIA

6

7 ATHELSTAN A. WRIGHT, No. 2:24-cv-0420 CSK P

8 Plaintiff,

9 v. NOTICE OF ELECTION

10 M. DEFOREST, et al., 11 Defendants. 12 13 Plaintiff elects to proceed as follows: 14 \_\_\_\_\_ First, plaintiff opts to proceed with the following claims: (a) First Amendment 15 retaliation claims against defendants M. Deforest, A. Albrecht, and D. Jodin (claims one and three, 2023); (b) First Amendment retaliation claims against 16 defendants D. Jodin, M. Murphy and A. Albrecht

(claim three, 2022); (c) Eighth Amendment claims against defendants M. Deforest, A. Albrecht, and D. Jodin 17 (claims one and three, 2023), and (d) Eighth Amendment claim against defendant R. St. Andre and failure to intervene to correct staff misconduct (claim two). 18 Second, under this option, plaintiff consents to dismissal of the following claims: (a) plaintiff's claims for money damages against defendants in their official 19 capacities; (b) plaintiff's Fourteenth Amendment and access to the courts claim raised against defendants M. Deforest and A. Albrecht (claim one); (c) First and 20 Fourteenth Amendment claims against defendant R. St. Andre (claim two); (d) equal protection claims against defendants B. Jodin, M. Murphy, and A. Albrecht 21 (claim three); (e) libel/defamation claims (claim three); and (f) state law claims (claim three); and (g) plaintiff's unrelated claims against defendant C. Griffith, all 22 without prejudice. 23 OR 24 \_\_\_\_\_ Plaintiff opts to file a second amended complaint and delay service of process. 25 26

DATED: \_\_\_\_\_

27 Plaintiff 28