

1 APPENDIX EXHIBITS

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3 1. Appendix A- (Exhibit A, 9th Cir. Mandate when Dismissal
4 takes effect (8/3/2022); (Exhibit B, 9th Cir. Order of Dismissal
5 (7/12/2022); (Exhibit C, Petitioner's precluded Appeal-
6 lant's Opening Brief).

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9 2. Appendix B- (Exhibits A, Motion to Withdraw Civil Complaint
10 from Superior Court and Transfer it to U.S. District Court; B, Or-
11 der Granting In Forma Pauperis (IP); C, Order of Dismissal;
12 D, Order Denying IP; E, Defendant's Motion to Extend Time and
13 File for Summary Judgement and Other Dispositive Motion;
14 F, Order Granting Defendant's Motion; G, Defendant's Notice
15 of Deposition on Petitioner; H, Petitioner's Motion for Leave
16 of the Court.

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18 3. Appendix C - Opening Brief (9th Circuit Court, # 21-16727, 11/

APPENDIX "A"

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 12 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALVIN DALTON,

Plaintiff-Appellant,

v.

CRAIG KOENIG, Acting Warden,

Defendant-Appellee.

No. 22-15229

D.C. No. 4:22-cv-00434-JSW
Northern District of California,
Oakland

ORDER

Before: SILVERMAN, CALLAHAN, and COLLINS, Circuit Judges.

The district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On February 22, 2022, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's February 22, 2022 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 5) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

No further filings will be entertained in this closed case.

DISMISSED.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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ALVIN HENRY DALTON,
Plaintiff,
v.
CRAIG KOENIG,
Defendant.

Case No. 22-cv-00434-JSW

**ORDER OF DISMISSAL; DENYING
MOTION TO REMOVE CIVIL
COMPLAINT AND TRANSFER**

(ECF No. 3)

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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 an official at the California Training Facility. He is granted leave to proceed in forma pauperis in a separate order. For the reasons discussed below, the case is DISMISSED for failure to state a cognizable claim for relief.

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STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

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Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although

1 in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's
2 obligation to provide the 'grounds of his 'entitle[ment] to relief requires more than labels and
3 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .
4 Factual allegations must be enough to raise a right to relief above the speculative level." *Bell*
5 *Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint
6 must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974.

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
8 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
9 alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*,
10 487 U.S. 42, 48 (1988).

11 DISCUSSION

12 Plaintiff fails to state a cognizable claim for relief for several reasons. First, he only names
13 a single Defendant, Craig Koenig, the Warden at his prison, but he does not allege any actions or
14 omissions by Koenig. Plaintiff's allegations are that subordinate prison officials violated his
15 rights. Under no circumstances is there respondeat superior liability under section 1983, or, in
16 other words, under no circumstances is there liability under section 1983 solely because one is
17 responsible for the actions or omissions of another, including a subordinate. *Taylor v. List*, 880
18 F.2d 1040, 1045 (9th Cir. 1989). Liability may be imposed on an individual defendant under 42
19 U.S.C. § 1983 if the plaintiff can show that the defendant's actions both actually and proximately
20 caused the deprivation of a federally protected right. *Lemire v. Cal. Dept. of Corrections &*
21 *Rehabilitation*, 726 F.3d 1062, 1085 (9th Cir. 2013). Plaintiff does not allege any actions (or
22 omissions) by only named defendant, he does not state a cognizable claim for relief.

23 Second, Plaintiff's does not state a cognizable claim for relief against the officials
24 allegedly involved in denying his rights. Plaintiff alleges that officials misapplied state law by
25 denying him visits by his wife based upon his criminal history, and that in doing so, they also
26 defamed his character because they included some information about that criminal history that was
27 not accurate. As to the denial of visits, the violation of state law cannot be the basis for a claim
28 under Section 1983. Plaintiff claims the denial violated his First and Fourteenth Amendment

1 rights as well. As to the First Amendment, a prisoner has no constitutional right to access to a
2 particular visitor. *See Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996), *amended*, 135 F.3d
3 1318 (9th Cir. 1998). Plaintiff's complaint and exhibits indicate that family members are allowed
4 to visit except when the inmate has certain factors in his criminal history (as well as other factors).
5 Plaintiff does not challenge this policy, but rather alleges that the policy was misapplied in his
6 case as to a particular visitor. The misapplication of prison policy and regulations as to a
7 particular visitor, if true, could violate state law, but under *Keenan* is not a violation of the First
8 Amendment.

9 Nor is the denial of a visit a violation of due process. A prisoner's interest in unfettered
10 visitation is not guaranteed by the Due Process Clause itself. *Kentucky Dep't of Corrections v.*
11 *Thompson*, 490 U.S. 454, 460 (1989). Looking at the regulatory language, California Code of
12 Regulations title 15, section 3170.1 sets forth general substantive criteria which must be followed
13 and circumstances under which visitation must be approved. However, section 3172.1(b)
14 specifically provides that visitation may be discretionarily denied for reasons other than those set
15 forth in the regulations and section 3170.1(c) states that visits are subject to denial or restriction as
16 necessary to provide fair allocation of prison resources. This reservation of the right to allow and
17 disallow visits "is not such that an inmate can reasonably form an objective expectation that a visit
18 would necessarily be allowed absent the occurrence of one of the listed conditions." *See*
19 *Thompson*, 490 U.S. at 464-65 (finding no protected liberty interest in Kentucky regulations).
20 Because a visit may be denied regardless of compliance with substantive criteria, no protected
21 liberty interest requiring constitutional protection is created. Accordingly, no due process
22 violation occurred.

23 Plaintiff's claims of defamation and slander are based on state law and therefore do not
24 state cognizable claims under Section 1983.

25 CONCLUSION

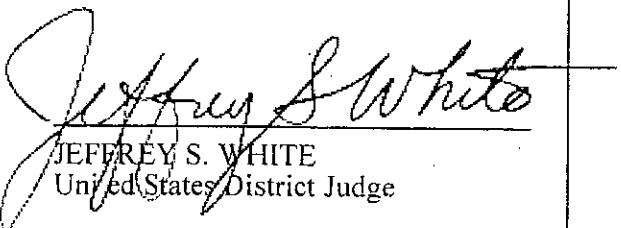
26 For the foregoing reasons, the case is DISMISSED for failure to state a claim upon which
27 relief may be granted. Plaintiff's motion for "removal" and "transfer" of this case from state court
28 to this Court is DENIED. Only defendants can remove a case to federal court. *See* 28 U.S.C. §

1 1441. If Plaintiff no longer wishes to pursue his claims in state court, he must inquire with the
2 state court as to the proper procedure to terminate that action.

3 The Clerk shall enter judgment and close the file.

4 **IT IS SO ORDERED.**

5 Dated: January 26, 2022

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8 JEFFREY S. WHITE
9 United States District Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALVIN HENRY DALTON,
Plaintiff,
v.
CRAIG KOENIG,
Defendant.

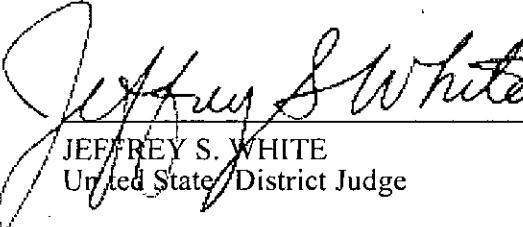
Case No. 22-cv-00434-JSW

JUDGMENT

Judgment is entered in favor of Defendant.

IT IS SO ORDERED.

Dated: January 26, 2022


JEFFREY S. WHITE
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 03 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALVIN DALTON,

Plaintiff - Appellant,

v.

CRAIG KOENIG, Acting Warden,

Defendant - Appellee.

No. 22-15229

D.C. No. 4:22-cv-00434-JSW

U.S. District Court for Northern
California, Oakland

MANDATE

The judgment of this Court, entered July 12, 2022, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Howard Hom
Deputy Clerk
Ninth Circuit Rule 27-7

**Additional material
from this filing is
available in the
Clerk's Office.**