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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN WESLEY WILLIAMS,
Plaintiff,

v.

WOODFORD, et al.,
Defendants.

CASE NO. 1:06-cv-1535-AWI-DLB PC

ORDER DISREGARDING MOTION FOR
LEAVE TO AMEND AS UNNECESSARY

(Doc. 22)

FINDINGS AND RECOMMENDATIONS
FOLLOWING SCREENING OF AMENDED
COMPLAINT

I. Findings and Recommendations Following Screening of Amended Complaint

A. Background

Plaintiff John Wesley Williams (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff originally filed this action with his cellmate. On December 1, 2006, the court severed the claims and ordered the clerk to open a new case for plaintiff’s cellmate. That case was subsequently dismissed for failure to prosecute.

On February 1, 2008, this Court dismissed plaintiff’s complaint with leave to file an amended complaint. (Doc. 16). After obtaining an extension of time, plaintiff filed a motion for leave to file an amended complaint, along with his amended complaint on April 21, 2008. (Doc. 22).

B. Order Disregarding Motion for Leave

Plaintiff was previously granted leave to file an amended complaint. Accordingly, he is not

1 required to file a motion seeking leave. Plaintiff's motion is therefore DISREGARDED. The Court
2 shall now screen plaintiff's amended complaint, filed April 21, 2008.

3 **C. Screening Requirement**

4 The court is required to screen complaints brought by prisoners seeking relief against a
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
7 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
9 "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
10 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
11 claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

12 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited
13 exceptions," none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.
14 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain "a short and
15 plain statement of the claim showing that the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a).
16 "Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and the
17 grounds upon which it rests." Swierkiewicz, 534 U.S. at 512. A court may dismiss a complaint only
18 if it is clear that no relief could be granted under any set of facts that could be proved consistent with
19 the allegations. Id. at 514. "The issue is not whether a plaintiff will ultimately prevail but whether
20 the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of
21 the pleadings that a recovery is very remote and unlikely but that is not the test." Jackson v. Carey,
22 353 F.3d 750, 755 (9th Cir. 2003) (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)); see also
23 Austin v. Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004) ("Pleadings need suffice only to put the
24 opposing party on notice of the claim . . ." (quoting Fontana v. Haskin, 262 F.3d 871, 977 (9th Cir.
25 2001))). However, "the liberal pleading standard . . . applies only to a plaintiff's factual allegations."
26 Neitze v. Williams, 490 U.S. 319, 330 n.9 (1989). "[A] liberal interpretation of a civil rights
27 complaint may not supply essential elements of the claim that were not initially pled." Bruns v. Nat'l
28 Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d

1 266, 268 (9th Cir. 1982)).

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3 **D. Summary of Plaintiff's Amended Complaint**

4 Plaintiff is presently incarcerated at California State Prison, Los Angeles County. The events
5 giving rise to this action occurred at North Kern State Prison. Plaintiff names Warden Lee Ann
6 Chrones, Nola Grannis, M. Junious, K. Baker, C. Lugo, S. Smith, Becerra, Guterrez, T. Vasquez,
7 Perez/Marsh, W. Back, T. Tatum, Snodgrass and M. Wanderer as defendants. Plaintiff seeks
8 preliminary injunctive relief, declaratory relief, and money damages. Plaintiff alleges a violation of
9 the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution,
10 the Rehabilitation Act, and the Americans with Disabilities Act.

11 Plaintiff's amended complaint consists of a chronological rendition of facts -- beginning in
12 April 2004 and concluding in August 2005 -- without delineating which facts he feels show
13 violations of which of his constitutional rights. It is Plaintiff's duty to correlate his claims for relief
14 with their alleged factual basis. The Court will not guess as to which facts Plaintiff believes show
15 any given constitutional violation(s).

16 Further, it appears that many of the allegations in Plaintiff's amended complaint concern
17 unrelated incidents involving different defendants. For example, Plaintiff's amended complaint
18 begins with an allegation of malicious prosecution involving defendants Perez/Marsh, Smith,
19 Chrones, Junious and Baker over an incident occurring on May 20, 2004 (Doc. 22, ¶¶20-25).
20 Plaintiff's amended complaint later discusses an incident on September 24, 2004 involving
21 defendant Tatum and a denial of religious services (*Id.*, ¶39); allegations concerning mail tampering
22 and retaliation in July and August 2004 by defendant Vasquez (*Id.*, ¶25-35); and allegations that
23 defendants Becerra, Guterrez and Tatum conspired with defendant Wanderer to have Plaintiff barred
24 from the Enhanced Out-Patient Program in retaliation for Plaintiff's grievance activities. (*Id.*, ¶45-
25 46).

26 Rule 18(a) provides that "[a] party asserting a claim, counterclaim, crossclaim, or third-party
27 claim may join, as independent or alternative claims, as many claims as it has against an opposing
28 party". F.R.C.P. 18(a). However, "multiple claims against a single party are fine, but Claim A

1 against Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated
2 claims against different defendants belong in different suits, not only to prevent the sort of morass
3 [a multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the
4 required filing fees-for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or
5 appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C. § 1915(g).”
6 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

7 Upon cursory review of Plaintiff’s amended complaint, it appears that Plaintiff states a
8 cognizable claim regarding his allegations of mail tampering and retaliation. Plaintiff alleges that
9 on July 2, 2004, he filed an inmate grievance concerning defendant Vasquez’s favoritism towards
10 Hispanic inmates. Plaintiff alleges that defendant Vasquez subsequently retaliated against plaintiff
11 by conducting a search of plaintiff’s cell and issuing Plaintiff a CDC-128A chrono for possessing
12 alcohol and making threats. Plaintiff states that he filed another inmate appeal against defendant
13 Vasquez on July 31, 2004. Plaintiff states that defendant Vasquez then tampered with plaintiff’s
14 mail in retaliation, and re-routed his mail to Pleasant Valley State Prison while he was incarcerated
15 at North Kern State Prison. Plaintiff states that he wrote to defendant Chrones complaining of
16 defendant Vasquez’s conduct, but defendant Chrones did nothing to ensure plaintiff’s rights.

17 Plaintiff’s remaining claims are unrelated to his mail tampering and retaliation claims
18 discussed above, and therefore is in violation of Rule 18(a). The Court shall recommend that the
19 remaining claims be dismissed without prejudice.

20 **i) Retaliation Claim**

21 Allegations of retaliation against a prisoner’s First Amendment rights to speech or to petition
22 the government may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir.
23 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v. Rowland, 65
24 F.3d 802, 807 (9th Cir. 1995). “Within the prison context, a viable claim of First Amendment
25 retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action
26 against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled
27 the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance
28 a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

1 Plaintiff states a cognizable claim against defendant Vasquez for retaliation.

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3 **ii) Mail Claim**

4 Plaintiff states that from late July 2004 to August 2004, defendant Vasquez interfered with
5 plaintiff's mail, so that plaintiff stop receiving all incoming mail. Prisoners have "a First Amendment
6 right to send and receive mail." Witherow v. Paff, 52 F.3d 264, 265 (9th Cir. 1995). However,
7 isolated incidents of mail interference or tampering will not support a claim under section 1983 for
8 violation of plaintiff's constitutional rights. See Davis v. Goord, 320 F.3d 346, 351 (2d. Cir. 2003);
9 Gardner v. Howard, 109 F.3d 427, 431 (8th Cir. 1997); Smith v. Maschner, 899 F.2d 940, 944 (10th
10 Cir. 1990).

11 Plaintiff states a cognizable claim against defendant Vasquez for violation of the First
12 Amendment.

13 **iii) Supervisory Liability**

14 Plaintiff states that he wrote to defendant Chrones on August 2, 2004. Plaintiff alleges that
15 defendant Chrones "did nothing to ensure Plaintiff's rights for protected conduct" (Doc. 22, ¶30).
16 Under section 1983, liability may not be imposed on supervisory personnel for the actions of their
17 employees under a theory of respondeat superior. When the named defendant holds a supervisory
18 position, the causal link between the defendant and the claimed constitutional violation must be
19 specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld,
20 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim for relief
21 under section 1983 for supervisory liability, plaintiff must allege some facts indicating that the
22 defendant either: personally participated in the alleged deprivation of constitutional rights; knew of
23 the violations and failed to act to prevent them; or promulgated or "implemented a policy so deficient
24 that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the
25 constitutional violation.'" Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations
26 omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

27 Plaintiff's acknowledges that defendant Chrones assigned a Captain to investigate Plaintiff's
28 claims. However, Plaintiff alleges that "Defendant Chrones allowed subordinates to conduct the

1 investigations pursued to intentionally avoid finding misconduct on the part of Defendant Vasquez,
2 and this was done by refusing to interview witnesses and acting with the specific intent to commit
3 peace officer perjury in the preparing of false documents on behalf of Defendant Chrones”. (Doc.
4 22, ¶34). Plaintiff directs the Court to exhibit D of his amended complaint.

5 Exhibit D includes the second level response to Plaintiff’s inmate appeal concerning
6 defendant Vasquez, which was denied by defendant Chrones. (Doc. 22, p.62). Exhibit D also
7 includes a letter dated October 18, 2004, apparently drafted by defendant Chrones to Mrs. Flora Lee,
8 whom Plaintiff identifies as his sister. (Id., pp.70-71). The letter indicates that defendant Chrones
9 had assigned a supervisor to oversee Plaintiff’s difficulty in receiving his mail, and also his
10 allegations of mail tampering.

11 Upon review of Plaintiff’s amended complaint and supporting exhibits, Plaintiff fails to state
12 a cognizable claim against defendant Chrones based on supervisory liability. Plaintiff has not
13 sufficiently alleged that defendant personally participated in the alleged deprivation, knew of the
14 violations and failed to act to prevent them, or promulgated a policy so deficient it is itself a
15 repudiation of Plaintiff’s constitutional rights. The Court notes that Plaintiff was previously
16 provided with the legal standard for stating a cognizable claim based upon supervisory liability.
17 (Doc. 16).

18 **iv) Inmate Appeals Process**

19 Plaintiff alleges that defendant Grannis reviewed all of Plaintiff’s appeals but failed to
20 properly perform his/her duties in order to protect defendant Chrones.

21 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under
22 color of state law and (2) the defendant deprived him of rights secured by the Constitution or federal
23 law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). “[A prison] grievance
24 procedure is a procedural right only, it does not confer any substantive right upon the inmates.”
25 Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993) (citing Azeez v. DeRobertis, 568 F. Supp. 8,
26 10 (N.D. Ill. 1982)); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty
27 interest in processing of appeals because no entitlement to a specific grievance procedure); Massey
28 v. Helman, 259 F.3d 641, 647 (7th Cir. 2001) (existence of grievance procedure confers no liberty

1 interest on prisoner); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). Actions in reviewing
2 prisoner’s administrative appeal cannot serve as the basis for liability under a section 1983 action.
3 Buckley, 997 F.2d at 495. Plaintiff claim against defendant Grannis fails as a matter of law.

4 **II. Conclusion**

5 Plaintiff’s original complaint was dismissed by order issued February 1, 2008, with leave to
6 amend. In the order, the Court provided Plaintiff with the legal standards that appeared applicable
7 to his claims.

8 Plaintiff’s amended complaint states a claim under the First Amendment against defendant
9 Vasquez. However, the remainder of Plaintiff’s claims are unrelated to Plaintiff’s cognizable claim
10 against defendant Vasquez, and therefore Plaintiff must pursue those claims in separate actions.
11 F.R.C.P. 18(a). Further leave to amend is not warranted since the claims to be dismissed are
12 unrelated to the cognizable claim against defendant Vasquez identified by the Court, and Plaintiff
13 would not be able to cure this deficiency by further amendment. Noll v. Carlson, 809 F.2d 1446,
14 1448-49 (9th Cir. 1987).

15 The Court HEREBY ORDERS as follows:

- 16 1. Plaintiff’s motion to amend the complaint, filed April 21, 2008 is DISREGARDED
17 as unnecessary; and
- 18 2. The Clerk of the Court is directed to correct the court docket so that Court Document
19 #22 captions both Plaintiff’s Motion to Amend his Complaint, as well as his
20 Amended Complaint.

21 Further, the Court HEREBY RECOMMENDS as follows:

- 22 1. This action shall proceed against defendant Vasquez for violation of the First
23 Amendment; and
- 24 2. The remaining claims be dismissed, without prejudice, for violation of Rule 18(a).

25 These Findings and Recommendations will be submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
27 days after being served with these Findings and Recommendations, plaintiff may file written
28 objections with the court. The document should be captioned “Objections to Magistrate Judge’s

1 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
2 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d
3 1153 (9th Cir. 1991).

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5 IT IS SO ORDERED.

6 **Dated: January 20, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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