

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

D. CAVER,

CASE NO. 1:08-cv-01616-SMS PC

Plaintiff,

ORDER DISMISSING ACTION, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY BE
GRANTED UNDER SECTION 1983

v.

A. HEDGEPEETH, et al.,

(Doc. 1)

Defendants.

Screening Order**I. Summary of Complaint**

Plaintiff D. Caver ("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 filed this action on October 24, 2008, against Kern Valley State Prison Warden A. Hedgepeth and C. Pfeiffer, an appeals coordinator ("Defendants"). Plaintiff alleges that Defendant Pfeiffer refuses to issue a log number so that he may pursue his inmate appeal, and Defendant Hedgepeth refuses to intervene in the matter. Plaintiff is seeking an injunction requiring Defendants to comply with their rules and regulations governing the inmate appeals process.

II. Screening Requirement

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek

monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

“Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

III. Plaintiff’s Claim

Under section 1983, Plaintiff is required to show that Defendants (1) acted under color of state law, and (2) committed conduct which deprived Plaintiff of a federal right. Hydrick v. Hunter, 500 F.3d 978, 987 (9th Cir. 2007). “A person deprives another of a constitutional right, where that person ‘does an affirmative act, participates in another’s affirmative acts, or omits to perform an act which [that person] is legally required to do that causes the deprivation of which complaint is made.’” Id. at 988 (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite causal connection can be established not only by some kind of direct, personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury.’” Id. (quoting Johnson at 743-44).

The existence of an administrative remedy process does not create any substantive rights and cannot support a claim for relief for violation of a constitutional right. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988); Massey v. Helman,

1 259 F.3d 641, 647 (7th Cir. 2001). Because Defendant Pfeiffer's refusal to issue a log number for
2 Plaintiff's inmate appeal does not violate any federally protected rights, Plaintiff's complaint fails
3 to state a viable claim for relief against either Defendant under section 1983.

4 **IV. Conclusion and Order**

5 For the reasons set forth herein, Plaintiff's complaint does not state a claim upon which relief
6 may be granted. Because the deficiency is not curable through amendment, Lopez v. Smith, 203
7 F.3d 1122, 1130 (9th Cir. 2000), this action is HEREBY ORDERED DISMISSED, with prejudice,
8 for failure to state a claim upon which relief may be granted under section 1983.

9
10 IT IS SO ORDERED.

11 **Dated: February 4, 2009**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE