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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DOUGLAS L. HOPPER,

CASE NO. 1:10-cv-00055-GBC PC

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH
LEAVE TO AMEND, FOR FAILURE TO STATE
A CLAIM

v.

S. WRIGHT, et al.,

(ECF. No. 1)

Defendants.

THIRTY-DAY DEADLINE

I. Screening Requirement

Douglas L. Hopper (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Currently pending before the Court is the complaint, filed January 11, 2010.

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 “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

In determining whether a complaint states a claim, the Court looks to the pleading standard under Federal Rule of Civil Procedure 8(a). Under 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)(2). “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it

1 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v.
2 Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555
3 (2007)).

4 Under section 1983, Plaintiff must demonstrate that each defendant personally participated
5 in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires
6 the presentation of factual allegations sufficient to state a plausible claim for relief. Iqbal, 129 S. Ct.
7 at 1949-50; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). “[A] complaint [that]
8 pleads facts that are ‘merely consistent with’ a defendant’s liability . . . ‘stops short of the line
9 between possibility and plausibility of entitlement to relief.’” Iqbal, 129 S. Ct. at 1949 (quoting
10 Twombly, 550 U.S. at 557). Further, although a court must accept as true all factual allegations
11 contained in a complaint, a court need not accept a plaintiff’s legal conclusions as true. Iqbal, 129
12 S. Ct. at 1949. “Threadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” Id. (quoting Twombly, 550 U.S. at 555).

14 **II. Complaint Allegations**

15 Plaintiff is in the custody of the California Department of Corrections and Rehabilitation and
16 is currently incarcerated at High Desert State Prison. Plaintiff brings this suit alleging Defendants
17 S. Wright, Fernando Gonzalez (Warden), B. Sanders, J. G. Lopez, Singleton, R. Cruz, and E. Noyce
18 violated his rights under the Eighth Amendment to be free of cruel and unusual punishment by
19 denying him his legal and personal property in violation of the California Penal Code and California
20 Code of Regulations Title 15. He is seeking \$5,000 and costs. (Compl. 8-9, ECF No. 1.)

21 On May 1, 2007, while housed at Pleasant Valley State Prison, Plaintiff was placed in
22 administrative segregation. (Id., ¶ 12.) In June 2007, Defendant Singleton noticed discrepancies on
23 the property inventory sheet, as it was missing the signature, date, and Plaintiff’s prison identification
24 number. (Id., ¶ 13.) Plaintiff was advised by Defendant Singleton that some food items he had
25 received prior to being placed in administrative segregation were missing. (Id., ¶ 14.) Due to these
26 issues, Plaintiff was not given any of his property and was informed he needed to file an inmate
27 appeal. (Id., ¶ 15.)

28 Plaintiff submitted an inmate appeal on June 19, 2007. (Id., ¶ 16.) Plaintiff was contacted

1 by Defendant J. G. Lopez on July 25, 2007, and informed that the investigation into his missing
2 property was completed and he would be receiving compensation for his lost property, as well as for
3 damage to his television screen that occurred during the storage and inventory process. (Id., ¶ 19.)
4 On September 17, 2007, prior to receiving compensation for the property, Plaintiff was transferred
5 to the California Correctional Institution in Tehachapi, California. (Id., ¶ 20.)

6 On October 26, 2007, Plaintiff was contacted by Defendant Lopez and informed that the
7 replacement items had been received and his memo and the granted appeal would be sent to Plaintiff.
8 (Id., ¶ 21.) In November 2007, Plaintiff attempted to file an inmate grievance regarding the delay
9 in receiving his property, which Defendant R. Cruz refused to accept. (Id., ¶ 22.) Plaintiff sent a
10 letter to Defendant Fernando Gonzales and complained to Defendant B. Sanders regarding the delay
11 in receiving his property. (Id., ¶¶ 23, 24.) On December 7, 2007, Plaintiff received some of his
12 property, but was told by Defendant Cruz that some of his property was missing. Plaintiff was also
13 provided with a list of non-allowable property and told that he could send the property home, donate
14 it to the institution, or request it be destroyed. (Id., ¶ 25.) Plaintiff was told that his property violated
15 the allowable property limits and Plaintiff complained that the non-allowable property included
16 “vital legal documents.” (Id., ¶¶ 25, 26.) Plaintiff was told that he would be given fifty days to
17 acquire the funds to send the property home. (Id., ¶ 27.) Five days later, on December 24, 2007,
18 Plaintiff received notice from Defendant Cruz that his fifty days had expired. (Id., ¶ 29.)

19 Plaintiff filed an appeal and was informed that his property was destroyed on December 18,
20 2007, because he did not have funds available to mail the property home. (Id., ¶ 31.) Plaintiff’s
21 appeal was denied and he was denied access to his legal materials. (Id., ¶ 40.) Plaintiff states that
22 the institution did not follow the procedures outlined in Title 15, Defendant Lopez defrauded him
23 by replacing items that were in violation of property limits, and by being denied access to his legal
24 documents he was denied access to the courts and had three active court cases dismissed. (Id., ¶¶
25 41-46.) Additionally, Plaintiff was denied his personal property for an extraordinary amount of time
26 in violation of California Penal Code, Section 2601(a). (Id., ¶ 48.)

27 For the reasons set forth below Plaintiff has failed to state a cognizable claim for relief.
28 Plaintiff shall be given the opportunity to file an amended complaint curing the deficiencies

1 described by the Court in this order. In the paragraphs that follow, the Court will provide Plaintiff
2 with the legal standards that appear to apply to his claims. Plaintiff should carefully review the
3 standards and amend only those claims that he believes, in good faith, are cognizable.

4 **III. Discussion**

5 **A. Deprivation of Property**

6 Plaintiff alleges that his property was destroyed without allowing him ninety days to obtain
7 the funds to mail the property to his sister. While an authorized, intentional deprivation of property
8 is actionable under the Due Process Clause, neither a negligent nor intentional unauthorized
9 deprivation of property by a prison official is actionable if a meaningful postdeprivation remedy is
10 available for the loss. Hudson v. Palmer, 468 U.S. 517, 533 (1984); Quick v. Jones, 754 F.2d 1521,
11 1524 (9th Cir. 1984). Plaintiff alleges that his property was damaged and/or lost in the transfer
12 between institutions. Whether the cause of the property loss or damage was intentional and
13 unauthorized or negligent, Due Process is satisfied if there is a meaningful postdeprivation remedy
14 available to Plaintiff. Hudson, 468 U.S. at 533. Plaintiff has an adequate post-deprivation remedy
15 available under California law. Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing Cal.
16 Gov't Code §§ 810-895).

17 **B. Access to the Courts**

18 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey, 518
19 U.S. 343, 346 (1996); Hebbe v. Pliler, 611 F.3d 1202, 1206 (9th Cir. 2010). The right is merely the
20 right to bring to court a grievance the inmate wishes to present, and is limited to direct criminal
21 appeals, habeas petitions, and civil rights actions. Lewis, 518 U.S. at 354. To bring a claim, the
22 plaintiff must have suffered an actual injury by being shut out of court. Christopher v. Harbury, 536
23 U.S. 403, 415 (2002); Lewis, 518 U.S. at 351. Although Plaintiff alleges that he had three cases
24 dismissed due to being deprived of his legal property, he fails to state if the cases were the type
25 included in his right to access the court. Lewis, 518 U.S. at 354.

26 **C. Cruel and Unusual Punishment**

27 Plaintiff alleges he was subjected to cruel and unusual punishment in violation of the Eighth
28 Amendment. To prove a violation of the Eighth Amendment the plaintiff must “objectively show

1 that he was deprived of something ‘sufficiently serious,’ and make a subjective showing that the
2 deprivation occurred with deliberate indifference to the inmate’s health or safety.” Thomas v.
3 Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) (citations omitted). Deliberate indifference requires
4 a showing that “prison officials were aware of a “substantial risk of serious harm” to an inmates
5 health or safety and that there was no “reasonable justification for the deprivation, in spite of that
6 risk.” Id. (quoting Farmer v. Brennan, 511 U.S. 825, 837, 844 (1994)). The circumstances, nature,
7 and duration of the deprivations are critical in determining whether the conditions complained of are
8 grave enough to form the basis of a viable Eighth Amendment claim.” Johnson v. Lewis, 217 F.3d
9 726, 731 (9th Cir. 2006). Plaintiff’s allegations fail to allege that he was deprived of something
10 sufficiently serious to state a cognizable claim.

11 **D. Defendant Liability**

12 Plaintiff brings this action against Fernando Gonzales, Warden of the California Correctional
13 Institution, “where the illegal acts occurred,” ECF No. 1, ¶ 3, and B. Sanders who was responsible
14 for the day to day operations of the facility, id., ¶ 4. Government officials may not be held liable for
15 the actions of their subordinates under a theory of *respondeat superior*. Iqbal, 129 S. Ct. at 1948.
16 Since a government official cannot be held liable under a theory of vicarious liability for section
17 1983 actions, Plaintiff must plead that the official has violated the Constitution through his own
18 individual actions. Id. at 1948. In other words, to state a claim for relief under section 1983,
19 Plaintiff must link each named defendant with some affirmative act or omission that demonstrates
20 a violation of Plaintiff’s federal rights.

21 **E. Grievance Process**

22 The prison grievance procedure does not confer any substantive rights upon inmates and
23 actions in reviewing appeals cannot serve as a basis for liability under section 1983. Buckley v.
24 Barlow, 997 F.2d 494, 495 (8th Cir. 1993). “Only persons who cause or participate in the violations
25 are responsible. Ruling against a prisoner on an administrative complaint does not cause or
26 contribute to the violation.” George v. Smith, 507 F.3d 605, 609-10 (7th Cir. 2007) (citations
27 omitted).

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1 **F. Title 15 Violations**

2 Section 1983 provides a cause of action where a state actor’s “conduct deprived the claimant
3 of some right, privilege, or immunity protected by the Constitution or laws of the United States.”
4 Leer v. Murphy, 844 F.2d 628, 632 (9th Cir. 1987) (quoting Parratt v. Taylor, 451 U.S. 527, 535
5 (1981), overruled on other grounds, Daniels v. Williams, 474 U.S. 327, 328 (1986)). “To the extent
6 that the violation of a state law amounts to the deprivation of a state-created interest that reaches
7 beyond that guaranteed by the federal Constitution, [s]ection 1983 offers no redress.” Sweaney v.
8 Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997), quoting Lovell v. Poway Unified Sch.
9 Dist., 90 F.3d 367, 370 (9th Cir. 1996). There is not a single reported case giving an independent
10 cause of action for violation of Title 15 regulations. See Davis v. Kissinger, No. CIV S-04-0878
11 GEB DAD P, 2009 WL 256574, *12 n.4 (E.D.Cal. Feb. 3, 2009). Nor is there any liability under
12 section 1983 for violating prison policy. Cousins v. Lockyer, 568 F.3d 1063, 1070 (9th Cir. 2009)
13 (quoting Gardner v. Howard, 109 F.3d 427, 430 (8th Cir. 1997)).

14 **G. State Law Claims**

15 Plaintiff alleges violations of state regulations. The Tort Claims Act requires that a tort claim
16 against a public entity or its employees be presented to the California Victim Compensation and
17 Government Claims Board, formerly known as the State Board of Control, no more than six months
18 after the cause of action accrues. Cal. Gov’t Code §§ 905.2, 910, 911.2, 945.4, 950-950.2 (West
19 2010). Presentation of a written claim, and action on or rejection of the claim are conditions
20 precedent to suit. State v. Superior Court of Kings County (Bodde), 90 P.3d 116, 119 (Cal. 2004);
21 Shirk v. Vista Unified School District, 42 Cal.4th 201, 209 (2007). To state a tort claim against a
22 public employee, a plaintiff must allege compliance with the Tort Claims Act. Cal. Gov’t Code §
23 950.6; Bodde, 90 P.3d at 123. “[F]ailure to allege facts demonstrating or excusing compliance with
24 the requirement subjects a compliant to general demurrer for failure to state a cause of action.”
25 Bodde, 90 P.3d at 120. If Plaintiff chooses to amend his complaint and include the state law claims
26 he will need to allege facts sufficient to show he has complied with the requirements of the
27 California Tort Claim Act.

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1 **H. California Penal Code**

2 Plaintiff alleges a violation of California Penal Code Section 2601(a) which provides that
3 inmates have a right “to inherit, own, sell, or convey real or personal property. . . .” However,
4 California courts have decided that neither section 2600 or 2601 establish any right of an inmate to
5 possess property in prison. In re Alcala, 222 Cal.App.3d 345, 372 (1990).

6 **IV. Conclusion and Order**

7 For the reasons stated, Plaintiff’s complaint does not state a cognizable claim for relief for
8 a violation of his constitutional rights. Plaintiff is granted leave to file an amended complaint within
9 thirty days. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the
10 nature of this suit by adding new, unrelated claims in his amended complaint. George, 507 F.3d at
11 607 (no “buckshot” complaints).

12 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
13 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights,
14 Iqbal, 129 S. Ct. at 1948-49. “The inquiry into causation must be individualized and focus on the
15 duties and responsibilities of each individual defendant whose acts or omissions are alleged to have
16 caused a constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although
17 accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the
18 speculative level” Twombly, 550 U.S. at 555 (citations omitted).

19 Finally, an amended complaint supercedes the original complaint, Forsyth v. Humana, Inc.,
20 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must
21 be “complete in itself without reference to the prior or superceded pleading,” Local Rule 220. “All
22 causes of action alleged in an original complaint which are not alleged in an amended complaint are
23 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th
24 Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

25 Based on the foregoing, it is HEREBY ORDERED that:

- 26 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 27 2. Plaintiff’s complaint, filed January 11, 2010, is dismissed for failure to state a claim
28 upon which relief may be granted under section 1983;

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3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an amended complaint; and

4. If Plaintiff fails to file an amended complaint in compliance with this order, this action will be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Dated: February 14, 2011


UNITED STATES MAGISTRATE JUDGE