

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEFFREY A. HUMPLE,

CASE NO. 1:10-cv-00843-GBC (PC)

Plaintiff,

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND

v.

(ECF No. 1)

K. ROODA, et al.,

Defendants.

SECOND AMENDED COMPLAINT DUE
WITHIN THIRTY DAYS

SCREENING ORDER

I. PROCEDURAL HISTORY

Plaintiff Jeffrey A. Humple (“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 May 13, 2010 and consented to Magistrate Judge jurisdiction on July 14, 2010. (ECF Nos. 1 & 7.) No other parties have appeared.

Plaintiff’s Complaint is now before the Court for screening. For the reasons set forth below, the Court finds that Plaintiff’s Complaint fails to state a claim upon which relief may be granted.

II. SCREENING REQUIREMENTS

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

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

6 A complaint must contain “a short and plain statement of the claim showing that the
7 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
8 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
9 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
10 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
11 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
12 face.’” Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual
13 allegations are accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

14 **III. SUMMARY OF COMPLAINT**

15 Plaintiff alleges violations of his rights of due process. He names the following
16 individuals as Defendants: James D. Hartley, K. Roorda, M. Cruz, S. T. Smith, L. Ochoa,
17 N. Lopez, H. R. Allison, J. Hill, D. Foston, and J. Walker.

18 Plaintiff alleges the following: Plaintiff was transferred from a level two institution to
19 another level two institution. Upon arrival at the new institution, Plaintiff was informed by
20 Defendant Roorda that he would not be allowed to keep certain personal property items
21 even though he was allowed to have them at the other institution.

22 Plaintiff seeks the Court to order Avenal State Prison to come into compliance with
23 all other California Department of Corrections and Rehabilitation level two institutions and
24 to allow Plaintiff to have his personal property returned.

25 **IV. ANALYSIS**

26 The Civil Rights Act under which this action was filed provides:

27 Every person who, under color of [state law] . . . subjects, or
28 causes to be subjected, any citizen of the United States . . . to

1 the deprivation of any rights, privileges, or immunities secured
2 by the Constitution . . . shall be liable to the party injured in an
3 action at law, suit in equity, or other proper proceeding for
4 redress.

5 42 U.S.C. § 1983. “Section 1983 . . . creates a cause of action for violations of the federal
6 Constitution and laws.” Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir.
7 1997) (internal quotations omitted).

8 **A. Due Process Claim**

9 Plaintiff appears to be alleging that his due process rights were violated by the
10 confiscation of his personal property.

11 The Due Process Clause protects prisoners from being deprived of property without
12 due process of law, Wolff v. McDonnell, 418 U.S. 539, 556 (1974), and prisoners have a
13 protected interest in their personal property, Hansen v. May, 502 F.2d 728, 730 (9th Cir.
14 1974). However, while an authorized, intentional deprivation of property is actionable
15 under the Due Process Clause, Hudson v. Palmer, 468 U.S. 517, 532 n.13 (1984) (citing
16 Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-36 (1982)); Quick v. Jones, 754 F.2d
17 1521, 1524 (9th Cir. 1985), neither negligent nor unauthorized intentional deprivations of
18 property by a state employee “constitute a violation of the procedural requirements of the
19 Due Process Clause of the Fourteenth Amendment if a meaningful post-deprivation
20 remedy for the loss is available,” Hudson, 468 U.S. at 533.

21 California Law provides an adequate post-deprivation remedy for any property
22 deprivations. See Cal. Gov’t Code §§ 895; Barnett v. Centoni, 31 F.3d 813, 816-17 (9th
23 Cir. 1994). California’s Tort Claims Act requires that a tort claim against a public entity or
24 its employees be presented to the California Victim Compensation and Government Claims
25 Board, formerly known as the State Board of Control, no more than six months after the
26 cause of action accrues. Cal. Gov’t Code §§ 905.2, 910, 911.2, 945.4, 950-950.2 (West
27 2006). Presentation of a written claim, and action on or rejection of the claim, are
28 conditions precedent to suit. State v. Superior Court of Kings County (Bodde), 90 P.3d
116, 123 (2004); Mangold v. California Pub. Utils. Comm’n, 67 F.3d 1470, 1477 (9th Cir.

1 1995). To state a tort claim against a public employee, a plaintiff must allege compliance
2 with the Tort Claims Act. State v. Superior Court, 90 P.3d at 123; Mangold, 67 F.3d at
3 1477; Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 627 (9th Cir. 1988).

4 Plaintiff states that, after a transfer, he was not allowed to have all of his personal
5 property. Plaintiff does not state if this confiscation was pursuant to a prison policy or was
6 an unauthorized act by Defendant Roorda. Plaintiff also fails to offer proof of compliance
7 with the California Tort Claims Act. Thus, Plaintiff has failed to allege facts sufficient to find
8 a violation of his due process rights. The Court will grant Plaintiff leave to amend his
9 complaint on this claim. In his amended complaint, Plaintiff should describe in greater
10 detail this claim.

11 **B. Prison Appeals Procedure Claim**

12 Plaintiff appears to be alleging that his appeals were mishandled or wrongly denied
13 by Defendants.

14 Defendants' actions in responding (or failing to respond) to Plaintiff's appeals alone
15 cannot give rise to any claims for relief under Section 1983 for violation of due process.
16 Interests protected by the Due Process Clause may arise from two sources—the Due
17 Process Clause itself and laws of the states. See Meachum v. Fano, 427 U.S. 215, 223-27
18 (1976). There is no constitutional right to a prison administrative appeal or grievance
19 system. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003). However, California Code
20 of Regulations, title 15 section 3084 et seq. grants state prisoners the right to a prison
21 appeals process. The regulations are purely procedural—they require the establishment
22 of a procedural structure for reviewing prisoner complaints and set forth no substantive
23 standards. Instead, they provide for flexible appeal time limits, see Cal. Code Regs. tit. 15,
24 § 3084.6, and, at most, that “no reprisal shall be taken against an inmate or parolee for
25 filing an appeal,” id. § 3084.1(d). A provision that merely sets procedural requirements,
26 even if mandatory, cannot form the basis of a constitutionally cognizable liberty interest.
27 Smith v. Noonan, 992 F.2d 987, 989 (9th Cir. 1993); see, e.g., Antonelli v. Sheahan, 81

1 F.3d 1422, 1430 (7th Cir. 1996) (prison grievance procedure is procedural right that does
2 not give rise to protected liberty interest requiring procedural protections of Due Process
3 Clause).

4 Accordingly, a prison official's failure to process grievances, without more, is not
5 actionable under Section 1983. See Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993);
6 see also Ramirez, 334 F.3d at 860 (prisoner's claimed loss of liberty interest in processing
7 of his appeals does not violate due process because prisoners lack a separate
8 constitutional entitlement to a specific prison grievance system). Although there is a First
9 Amendment right to petition government for redress of grievances, there is no right to a
10 response or any particular action. See Flick v. Alba, 932 F.2d 728, 729 (8th Cir. 1991)
11 ("prisoner's right to petition the government for redress . . . is not compromised by the
12 prison's refusal to entertain his grievance.").

13 Thus, because he has neither a liberty interest nor a substantive right to an inmate
14 appeal, Plaintiff fails to state a claim in this regard. Because amendment of this claim
15 would be futile, the Court advises Plaintiff that he would be well-served devoting his energy
16 to pursuing his other claims.

17 **C. Personal Participation By Defendants**

18 Under section 1983, Plaintiff must demonstrate that each defendant personally
19 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
20 2002). The Supreme Court recently emphasized that the term "supervisory liability,"
21 loosely and commonly used by both courts and litigants alike, is a misnomer. Iqbal, 129
22 S.Ct. at 1949. "Government officials may not be held liable for the unconstitutional conduct
23 of their subordinates under a theory of respondeat superior." Id. at 1948. Rather, each
24 government official, regardless of his or her title, is only liable for his or her own
25 misconduct, and therefore, Plaintiff must demonstrate that each defendant, through his or
26 her own individual actions, violated Plaintiff's constitutional rights. Id. at 1948-49.

27 In this action, Plaintiff has not alleged facts demonstrating that Defendants James
28

1 D. Hartley, M. Cruz, S. T. Smith, L. Ochoa, N. Lopez, H. R. Allison, J. Hill, D. Foston, or J.
2 Walker personally acted to violate his rights. Plaintiff must specifically link each Defendant
3 to a violation of his rights. Plaintiff shall be given the opportunity to file an amended
4 complaint curing the deficiencies described by the Court in this order.

5 **V. CONCLUSION AND ORDER**

6 The Court finds that Plaintiff's Complaint fails to state any Section 1983 claims upon
7 which relief may be granted. The Court will provide Plaintiff time to file an amended
8 complaint to address the potentially correctable deficiencies noted above. See Noll v.
9 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). In his Amended Complaint, Plaintiff must
10 demonstrate that the alleged incident or incidents resulted in a deprivation of his
11 constitutional rights. Iqbal, 129 S.Ct. at 1948-49. Plaintiff must set forth "sufficient factual
12 matter . . . to 'state a claim that is plausible on its face.'" Iqbal, 129 S.Ct. at 1949 (quoting
13 Twombly, 550 U.S. at 555). Plaintiff must also demonstrate that each defendant personally
14 participated in the deprivation of his rights. Jones, 297 F.3d at 934.

15 Plaintiff should note that although he has been given the opportunity to amend, it
16 is not for the purposes of adding new defendants or claims. Plaintiff should focus the
17 amended complaint on claims and defendants discussed herein.

18 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint
19 be complete in itself without reference to any prior pleading. As a general rule, an
20 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,
21 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no longer
22 serves any function in the case. Therefore, in an amended complaint, as in an original
23 complaint, each claim and the involvement of each defendant must be sufficiently alleged.
24 The amended complaint should be clearly and boldly titled "First Amended Complaint,"
25 refer to the appropriate case number, and be an original signed under penalty of perjury.

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

- 27 1. Plaintiff's Complaint is dismissed for failure to state a claim, with leave to file
28

1 an amended complaint within thirty (30) days from the date of service of this
2 order;

3 2. Plaintiff shall caption the amended complaint "First Amended Complaint" and
4 refer to the case number 1:10-cv-843-GBC (PC); and

5 3. If Plaintiff fails to comply with this order, this action will be dismissed for
6 failure to state a claim upon which relief may be granted.

7
8
9 IT IS SO ORDERED.

10 Dated: June 10, 2011

11 
12 _____
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28