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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY E. JOHNSON, SR.,

Case No. 1:14-cv-00643-SKO (PC)

Plaintiff,

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND
DISMISSING COMPLAINT, WITH LEAVE
AMEND, FOR FAILURE TO STATE A
CLAIM

v.

SEXTON, et al.,

Defendants.

(Docs. 1 and 2)

THIRTY-DAY DEADLINE TO AMEND

I. Screening Requirement and Standard

Plaintiff Anthony E. Johnson, Sr., a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on April 30, 2014. The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an 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).

1 A complaint must contain “a short and plain statement of the claim showing that the
2 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
4 conclusory statements, do not suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937
5 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and
6 courts “are not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572
7 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual
8 allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678.

9 Under section 1983, Plaintiff must demonstrate that each defendant personally participated
10 in the deprivation of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). This
11 requires the presentation of factual allegations sufficient to state a plausible claim for relief. *Iqbal*,
12 556 U.S. at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). Prisoners
13 proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and
14 to have any doubt resolved in their favor, *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)
15 (citations omitted), but nevertheless, the mere possibility of misconduct falls short of meeting the
16 plausibility standard, *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

17 **II. Discussion**

18 **A. Section 1983**

19 Plaintiff, who is currently incarcerated at Folsom State Prison, brings this action against
20 Associate Warden Sexton and possibly other staff members for violating his rights at California
21 State Prison-Corcoran (“CSP-Corcoran”). Section 1983 provides a cause of action for the
22 violation of Plaintiff’s constitutional or other federal rights by persons acting under color of state
23 law. *Nurre v. Whitehead*, 580 F.3d 1087, 1092 (9th Cir 2009); *Long v. County of Los Angeles*,
24 442 F.3d 1178, 1185 (9th Cir. 2006); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). Here,
25 the Court cannot discern the factual basis underlying Plaintiff’s allegation that prison staff violated
26 his First and Fourteenth Amendment rights.

27 Plaintiff was transported to CSP-Corcoran on September 13, 2013, and he repeatedly
28 attempted, unsuccessfully, to obtain the inventory form for his personal and legal property.

1 Plaintiff then pursued an inmate appeal regarding the matter. To the extent that Plaintiff's claim
2 arises from the loss of his property, section 1983 provides no redress because the property loss
3 does not implicate the protections of the federal Due Process Clause. *Hudson v. Palmer*, 468 U.S.
4 517, 533, 104 S.Ct. 3194 (1984); *Nevada Dept. of Corrections v. Greene*, 648 F.3d 1014, 1019
5 (9th Cir. 2011); *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994). Similarly, section 1983
6 provides no redress to the extent Plaintiff's claim arises from his dissatisfaction with the inmate
7 appeals process, as the existence of an appeals process creates no substantive rights.¹ *Wilkinson v.*
8 *Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384 (2005); *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir.
9 2003). Finally, although Plaintiff mentions a legal proceeding, his complaint is devoid of any
10 facts supporting a constitutional claim arising out of denial of access to the courts. *Lewis v.*
11 *Casey*, 518 U.S. 343, 346, 116 S.Ct. 2174 (1996); *Silva v. Di Vittorio*, 658 F.3d 1090, 1101-02
12 (9th Cir. 2011); *Greene*, 648 F.3d at 1018.

13 Accordingly, the Court finds that Plaintiff's complaint fails to state any claims upon which
14 relief may be granted under section 1983. The Court will provide Plaintiff with the opportunity to
15 file an amended complaint, in the event the deficiencies are capable of being cured through
16 amendment. *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d
17 1122, 1130 (9th Cir. 2000).

18 **B. Motion for Appointment of Counsel**

19 Concurrently with his complaint, Plaintiff filed a motion seeking the appointment of
20 counsel. Plaintiff does not have a constitutional right to the appointment of counsel in this action.
21 *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009); *Storseth v. Spellman*, 654 F.2d 1349, 1353
22 (9th Cir. 1981). The Court may request the voluntary assistance of counsel pursuant to 28 U.S.C.
23 § 1915(e)(1), but it will do so only if exceptional circumstances exist. *Palmer*, 560 F.3d at 970;
24 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). In making this determination, the
25 Court must evaluate the likelihood of success on the merits and the ability of Plaintiff to articulate
26 his claims *pro se* in light of the complexity of the legal issues involved. *Palmer*, 560 F.3d at 970
27 (citation and quotation marks omitted); *Wilborn*, 789 F.2d at 1331. Neither consideration is

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¹ Defendant Sexton was assigned to review Plaintiff's inmate appeal.

1 dispositive and they must be viewed together. *Palmer*, 560 F.3d at 970 (citation and quotation
2 marks omitted); *Wilborn* 789 F.2d at 1331.

3 In the present case, the Court does not find the required exceptional circumstances.
4 Plaintiff's complaint does not state any claims for relief under section 1983 and based on a review
5 of the record in this case, the Court does not find that Plaintiff cannot adequately articulate his
6 claims. *Palmer*, 560 F.3d at 970. Therefore, Plaintiff's motion for the appointment of counsel is
7 denied.

8 **III. Conclusion and Order**

9 Plaintiff's complaint fails to state a claim upon which relief may be granted under section
10 1983. The Court will provide Plaintiff with an opportunity to file an amended complaint. *Akhtar*,
11 698 F.3d at 1212-13; *Lopez*, 203 F.3d at 1130.

12 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
13 each named defendant did that led to the deprivation of Plaintiff's federal rights, *Jones*, 297 F.3d
14 at 934. Plaintiff must demonstrate a causal connection between each defendant's conduct and the
15 violation of his rights; liability may not be imposed on supervisory personnel under the theory of
16 mere *respondeat superior*. *Iqbal*, 556 U.S. at 676-77; *Starr v. Baca*, 652 F.3d 1202, 1205-07 (9th
17 Cir. 2011). Further, although accepted as true, the "[f]actual allegations must be [sufficient] to
18 raise a right to relief above the speculative level. . . ." *Twombly*, 550 U.S. at 555 (citations
19 omitted).

20 Finally, an amended complaint supercedes the original complaint, *Lacey v. Maricopa*
21 *County*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be "complete in itself without
22 reference to the prior or superceded pleading," Local Rule 220.

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. Plaintiff's motion for the appointment of counsel is DENIED;
- 25 2. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim
26 under section 1983;
- 27 3. The Clerk's Office shall send Plaintiff a civil rights complaint form;

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

5. 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 17, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE