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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 EARNEST C. WOODS,

11 Plaintiff,

No. CIV S-06-1857 GEB EFB P

12 vs.

13 TOM L. CAREY, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff is a state prisoner proceeding without counsel in an action brought under 42
17 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28
18 U.S.C. § 636(b)(1). On April 26, 2010, the undersigned found that plaintiff's second amended
19 complaint stated a cognizable retaliation claim against defendant Cervantes. The court granted
20 plaintiff leave to amend, if he so desired, for the limited purpose of stating a related, and
21 cognizable claim against defendant Carey. The court found that the remaining claims were
22 either not cognizable or were improperly joined in a single lawsuit and recommended that such
23 claims be dismissed without prejudice to plaintiff bringing them in separate civil rights actions.¹
24 In making this recommendation, the court noted that plaintiff had named 42 defendants, and that
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26 ¹ On July 22, 2010, the district judge adopted those findings and recommendations in full.
Dckt. No. 52.

1 his allegations consisted of a list of dozens of inmate appeals he had filed over the course of
2 several years, at several institutions, against numerous individuals, and regarding a wide range of
3 issues. In granting plaintiff leave to amend for the limited purpose of stating a cognizable claim
4 against defendant Carey, the court reminded plaintiff that unrelated claims against different
5 defendants must be pursued in multiple lawsuits. Dckt. No. 47 at 9. Further, the court warned
6 plaintiff that a long, rambling pleading, including many defendants with unexplained, tenuous or
7 implausible connection to the alleged constitutional injury or joining a series of unrelated claims
8 against many defendants very likely will result in delaying the review required by 28 U.S.C. §
9 1915 and an order dismissing plaintiff's action pursuant to Rule 41 of the Federal Rules of Civil
10 Procedure for violation of the court's instructions. *Id.*

11 Plaintiff has filed a third amended complaint, which fails to comply with the instructions
12 in the court's April 26, 2010 order and fails to correct the deficiencies identified in that order.
13 The court granted plaintiff leave to file an amended complaint, limited to a retaliation claim
14 against Cervantes, and a related claim against defendant Carey, because the remaining
15 allegations were either not cognizable or improperly joined.

16 While plaintiff includes allegations against defendants Cervantes and Carey in his third
17 amended complaint, plaintiff now fails to state a claim against either defendant. As for
18 defendant Cervantes, plaintiff alleges that he failed to process and/or screened out several of his
19 inmate appeals. In the April 26, 2010 order, the court informed plaintiff that a prison official's
20 failure to process grievances, without more, is not actionable under § 1983. *See Ramirez v.*
21 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding that prisoner's claimed loss of a liberty
22 interest in the processing of his appeals does not violate due process because prisoners lack a
23 separate constitutional entitlement to a specific prison grievance system). While inmates have a
24 federal right to petition for redress of grievances and to file suit without being subjected to
25 retaliation, plaintiff's conclusory allegations do not support such a claim. *See Rhodes v.*
26 *Robinson*, 408 F.3d 559, 567 (9th Cir. 2005). To prove retaliation, plaintiff must show that a

1 state actor took some adverse action against him because of his protected conduct, and that such
2 action chilled the inmate's exercise of his First Amendment rights and did not reasonably
3 advance a legitimate penological purpose. *See Rhodes*, 408 F.3d at 567-68 (9th Cir. 2005);
4 *Barnett v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam). In the third amended
5 complaint, plaintiff does not allege that Cervantes failed to process any grievance in retaliation
6 for exercising a constitutionally-protected right, or in retaliation for filing a grievance.

7 As a threshold matter with respect to defendant Carey, the court notes that plaintiff's
8 allegations do not appear related to the allegations against Cervantes. As explained in the April
9 26, 2010 order, and for a second time below, unrelated claims against different defendants must
10 be pursued in separate lawsuits. As to Carey, plaintiff merely alleges the fact that he has filed
11 inmate appeals against defendant Carey based on various policies that Carey allegedly created.
12 If plaintiff wishes to challenge the policies created by Carey, plaintiff must say so in an amended
13 complaint, and must provide facts showing how each challenged policy resulted in a deprivation
14 of plaintiff's federal rights. Plaintiff also alleges that Carey "personally participated" in an
15 institutional classification hearing where plaintiff was assessed ninety days in administrative
16 segregation, and that Carey threatened plaintiff for filing grievances. To the extent plaintiff
17 wishes to state a retaliation claim against Carey, plaintiff's conclusory allegations are
18 insufficient, as plaintiff does not allege what Carey threatened him with or how such a threat
19 constituted an "adverse action" for purposes of a retaliation claim. To the extent plaintiff desires
20 to state a claim based upon an alleged denial of due process at his classification hearing, the
21 court notes that the Due Process Clause protects prisoners from being deprived of liberty without
22 due process of law. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). In a disciplinary proceeding
23 where a liberty interest is at stake, due process requires that minimum procedural requirements
24 be met, including: (1) written notice of the charges; (2) at least 24 hours between the time the
25 prisoner receives written notice and the time of the hearing, so that the prisoner may prepare his
26 defense; (3) a written statement by the fact finders of the evidence they rely on and reasons for

1 taking disciplinary action; (4) the right of the prisoner to call witnesses in his defense, when
2 permitting him to do so would not be unduly hazardous to institutional safety or correctional
3 goals; and (5) legal assistance to the prisoner where the prisoner is illiterate or the issues
4 presented are legally complex. *Wolff*, 418 U.S. at 564-70. Plaintiff's allegation, that Carey
5 participated in a hearing, fails to state a cognizable due process claim.

6 Additionally, the third amended complaint purports to name a total of 45 defendants, and
7 the allegations consist of a list of dozens of inmate appeals plaintiff has filed against various
8 prison officials, regarding a broad range of concerns and covering a period spanning several
9 years. It is not clear whether the list of grievances is provided for background purposes, or
10 whether plaintiff seeks to impose liability on each named individual based upon the conduct
11 described, in a vague and conclusory manner, with respect to each grievance. Like the second
12 amended complaint, most of the incidents alleged are factually distinct for the others, in that they
13 rely on a discrete set of facts regarding the conduct of separate defendants.

14 Plaintiff may not bring all of the claims alleged in the third amended complaint in a
15 single lawsuit. Federal Rule of Civil Procedure 18(a) allows a plaintiff to assert multiple claims
16 when they are against a single defendant. Federal Rule of Civil Procedure 20(a)(2) allows a
17 plaintiff to join multiple defendants to a lawsuit where the right to relief arises out of the same
18 "transaction, occurrence, or series of transactions or occurrences" and "any question of law or
19 fact common to all defendants will arise in the action." However, unrelated claims against
20 different defendants must be pursued in separate lawsuits. *See George v. Smith*, 507 F.3d 605,
21 607 (7th Cir. 2007). This rule is not only intended "not only to prevent the sort of morass [a
22 multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the
23 required filing fees-for the Prison Litigation Reform Act limits to 3 the number of frivolous suits
24 or appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C. §
25 1915(g)." *Id.*

26 Because plaintiff fails to state a claim, includes claims that are improperly joined and

1 fails to comply with the court's instructions regarding the filing of an amended complaint, as
2 discussed above, the court must dismiss the complaint. However, plaintiff is granted leave to
3 file, within thirty days, a fourth amended complaint that corrects the deficiencies addressed
4 herein. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts must
5 afford pro se litigants an opportunity to amend to correct any deficiency in their complaints).
6 However, plaintiff is admonished that any fourth amended complaint must strictly adhere to the
7 directives set forth herein. Failure to do so will result in a recommendation that this action be
8 dismissed without further leave to amend.

9 In a fourth amended complaint, should one be filed, plaintiff is encouraged to set forth a
10 short and plain statement of the relevant facts, followed by a brief statement of each legal claim.
11 Plaintiff need not identify the law that makes the alleged conduct wrong. He may use his own
12 language to state, simply and directly, the wrong that has been committed and clearly explain
13 how each state actor identified as a defendant was involved and what relief plaintiff requests of
14 each defendant. *Jones v. Community Redevelopment Agency of the City of Los Angeles*, 733
15 F.2d 646 (9th Cir. 1984); *Johnson v. Duffy*, 588 F.2d 740 (9th Cir. 1978). Plaintiff shall identify
16 each defendant in both the caption and the body of the amended complaint, and clearly set forth
17 the allegations against each such defendant. He shall not include any new claims or defendants
18 and shall remove from his fourth amended complaint any claims and defendants that do not
19 adhere to the directives set forth herein.

20 Additionally, plaintiff is informed that the court cannot refer to prior pleadings in order to
21 make an amended complaint complete. Local Rule 220 requires that an amended complaint be
22 complete in itself. This is because, as a general rule, an amended complaint supersedes the
23 original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Accordingly, once
24 plaintiff files an amended complaint, the original no longer serves any function in the case.
25 Therefore, "a plaintiff waives all causes of action alleged in the original complaint which are not
26 alleged in the amended complaint," *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir.

1 1981), and defendants not named in an amended complaint are no longer defendants. *Ferdik v.*
2 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

3 Finally, the court cautions plaintiff that failure to comply with the Federal Rules of Civil
4 Procedure, this court's Local Rules, or any court order may result in a recommendation that this
5 action be dismissed. *See* Local Rule 110; *Ferdik*, 963 F.2d at 1262-63 (affirming dismissal with
6 prejudice for pro se prisoner's failure to comply with order requiring filing of amended civil
7 rights complaint); *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (affirming dismissal
8 with prejudice for pro se prisoner's failure to comply with order requiring filing of amended
9 habeas petition); *Moore v. United States*, 193 F.R.D. 647, 653 (N.D. Cal. 2000) (denying motion
10 for leave to file third amended complaint and dismissing action with prejudice for pro se
11 plaintiff's failure to comply with Rule 8); *Franklin v. Murphy*, 745 F.2d 1221, 1232-33 (9th Cir.
12 1984) (affirming dismissal with prejudice for pro se prisoner's failure to prosecute); *Carey v.*
13 *King*, 856 F.2d 1439, 1441 (9th Cir. 1988) (affirming dismissal without prejudice for pro se
14 prisoner's failure to comply with local rule requiring he notify the court of any change of
15 address).

16 Accordingly, it hereby is ordered that plaintiff's third amended complaint is dismissed
17 with leave to amend within 30 days. Any amended complaint must bear the docket number
18 assigned to this case and be titled "Fourth Amended Complaint." Failure to comply with this
19 order will result in a recommendation that this action be dismissed.

20 Dated: September 23, 2010.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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