

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

CHARLES SLY,

Plaintiff, No. CIV S-08-1783 GGH P

VS.

SPARKMAN, et al.,

**Defendants. ORDER**

Plaintiff is a state prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

This court has repeatedly directed plaintiff to provide the appropriate documentation to support a request for in forma pauperis status pursuant to 28 U.S.C. § 1915. See Orders, filed on 8/21/08 and 10/08/08. Plaintiff's responses have not provided the specifically ordered filled-out certificate portion of the IFP form or the prison trust account statement for the relevant six month period, but plaintiff insists that prison officials have stymied his efforts to provide the documents. The court has reviewed plaintiff's filings and will now find that, among the partial responses he has provided, and notwithstanding his largely incoherent

1 contentions regarding prison officials' responses to his efforts to comply with the court's orders,  
2 plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a).  
3 Accordingly, the request to proceed in forma pauperis will be granted.

4 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28  
5 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently  
6 without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C.  
7 § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding  
8 month's income credited to plaintiff's prison trust account. These payments shall be collected  
9 and forwarded by the appropriate agency to the Clerk of the Court each time the amount in  
10 plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

11 The court is required to screen complaints brought by prisoners seeking relief  
12 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
13 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised  
14 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
15 granted, or that seek monetary relief from a defendant who is immune from such relief. 28  
16 U.S.C. § 1915A(b)(1),(2).

17 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
18 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
19 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
20 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
21 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
22 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
23 Cir. 1989); Franklin, 745 F.2d at 1227.

24 A complaint must contain more than a "formulaic recitation of the elements of a  
25 cause of action;" it must contain factual allegations sufficient to "raise a right to relief above the  
26 speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).

1     “The pleading must contain something more...than...a statement of facts that merely creates a  
2     suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal  
3     Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). In reviewing a complaint under this  
4     standard, the court must accept as true the allegations of the complaint in question, Hospital  
5     Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light  
6     most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. Jenkins v.  
7     McKeithen, 395 U.S. 411, 421 (1969).

8                 Plaintiff has submitted a complaint that, along with randomly attached exhibits, is  
9     260 pages in length. On the first page of his complaint, plaintiff names as defendants:  
10    Correctional Officer (C/O) Sparkman; Sergeant (Sgt.) M. Keener; Lieutenant (Lt.) J.K.  
11    Broddrick. He adds more defendants a page later: Lt. W.A. Sobotta; Lt. G. Martinez; Sgt.  
12    Pulley; C/O A. Schwab; LVN L. Vagas; Captain B. Mayfield, seven of the nine of whom,  
13    plaintiff claims, are employed at Old Folsom State Prison. Plaintiff alleges that he had four  
14    “access” boxes, plus a “T.V.Box,” but somehow wound up with three “incomplete” boxes (fruit  
15    boxes) in receiving. Complaint, p. 13.

16                 Plaintiff claims that inventory sheets and quarterly package receipts support his  
17    claim and that defendants Sparkman, Keener, and Mayfield are responsible for “causing the  
18    situation” and for “circumventing my afford [sic] to seek relieve [sic]...” Id. In addition to the  
19    incoherence of his allegations contending that unidentified sections of the state penal code and  
20    state regulations have been violated, he claims violations of “federal law, even city law.” Id.  
21    Moreover, in addition to naming as responsible, some of the individuals he has identified as  
22    defendants, he also claims that C/O T. Jones, C/O Sanders, Lt. Darnell (not identified as  
23    defendants) “and those staff (all) hole [sic] staff” are responsible without explaining how either  
24    the named defendants or any of these other individuals have deprived him of a constitutional  
25    right. Id.

26     \\\\\\\\

1 Plaintiff continues in this fashion, first providing the dates of 12/07/07 through  
2 4/24/08 with no explanation and than asserting that on 12/15/06, C/O Jones apparently kept  
3 plaintiff waiting for several hours “to release my [sic] he and his wife was [sic] property room  
4 officers.” Complaint, p. 14. Plaintiff goes on to state that he only received some undescribed  
5 property when a Dr. Gyodcey intervened on his behalf. Id.

6 Plaintiff goes on to say that his rights to appeal have been violated, claiming that  
7 he is attaching “119 pieces of information marked with a blue marker,” as well as “178 pieces of  
8 information, for a grand total of 297.” Id. Plaintiff asks to be paid in full for unspecified items.

9 Plaintiff’s filing wholly violates Rule 8 of the Federal Rules of Civil Procedure.  
10 Fed. R. Civ. P 8 sets forth general rules of pleading in the federal courts. Complaints are  
11 required to set a forth (1) the grounds upon which the court’s jurisdiction rests, (2) a short and  
12 plain statement of the claim showing entitlement to relief; and (3) a demand for the relief  
13 plaintiff seeks. The complaint meets none of these requirements. All that is required are  
14 sufficient allegations to put defendants fairly on notice of the claims against them. See Conley v.  
15 Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957); 5 C. Wright & A. Miller,  
16 Federal Practice and Procedure § 1202 (2d ed. 1990).

17 In McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996), the Ninth Circuit has  
18 stated that a complaint should set forth “who is being sued, for what relief, and *on what theory*,  
19 with enough detail to guide discovery” (emphasis added)). A complaint that fails to comply with  
20 rules 8(a) and 8(e) may be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b). Rule 8;  
21 Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981)). Further, “[t]he  
22 propriety of dismissal for failure to comply with Rule 8 does not depend on whether the  
23 complaint is wholly without merit,” McHenry 84 F.3d at 1179. This complaint will be  
24 dismissed but plaintiff will be granted leave to amend. In doing so, plaintiff must clearly identify  
25 each defendant. Plaintiff may not simply attach exhibits randomly to his complaint expecting the  
26 court to ferret out his claims for him; he must set forth his allegations within an amended

1 complaint linking each defendant to conduct which has deprived plaintiff of his constitutional  
2 rights with adequate specificity and coherence.

3 Moreover, plaintiff is informed that the United States Supreme Court has held that  
4 “an unauthorized intentional deprivation of property by a state employee does not constitute a  
5 violation of the procedural requirements of the Due Process Clause of the Fourteenth  
6 Amendment if a meaningful postdeprivation remedy for the loss is available.” Hudson v.  
7 Palmer, 468 U.S. 517, 533, 104 S. Ct. 3194 (1984); Taylor v. Knapp, 871 F.2d 803, 805 (9<sup>th</sup> Cir.  
8 1989) (“[i]n Parratt v. Taylor, 451 U.S. 527, 101 S. Ct. 1908 (1981),<sup>1</sup> the Court held that where a  
9 deprivation of property resulted from the unpredictable negligent acts of state agents, the  
10 availability of an adequate state postdeprivation remedy satisfied the requirement of due  
11 process.”) Thus, where the state provides a meaningful postdeprivation remedy, only  
12 authorized, intentional deprivations constitute actionable violations of the Due Process Clause.  
13 An authorized deprivation is one carried out pursuant to established state procedures, regulations,  
14 or statutes. Piatt v. McDougall, 773 F.2d 1032, 1036 (9th Cir. 1985); see also Knudson v. City  
15 of Ellensburg, 832 F.2d 1142, 1149 (9th Cir. 1987); The California Legislature has provided a  
16 remedy for tort claims against public officials in the California Government Code, §§ 900, et seq.

17 In the instant case, plaintiff has not alleged facts which sufficiently describe any  
18 deprivation, much less whether any such deprivation may have been authorized. Thus, plaintiff’s  
19 allegations against the defendants regarding “incomplete” boxes do not state a cognizable claim  
20 for relief and will be dismissed with leave to amend.

21 To the extent that plaintiff seeks to implicate prison officials for the manner in  
22 which his grievances have been addressed, plaintiff is informed that prisoners do not have a  
23 “separate constitutional entitlement to a specific prison grievance procedure.” Ramirez v.  
24 Galaza, 334 F.3d 850, 860 (9th Cir. 2003), citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir.

---

25  
26 <sup>1</sup> Overruled on another ground by Daniels v. Williams, 474 U.S. 327, 330-331, 106 S. Ct.  
662, 664 (1986).

1 1988). Even the non-existence of, or the failure of prison officials to properly implement, an  
2 administrative appeals process within the prison system does not raise constitutional concerns.  
3 Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). See also, Buckley v. Barlow, 997 F.2d 494,  
4 495 (8th Cir. 1993); Flick v. Alba, 932 F.2d 728 (8th Cir. 1991). Azeez v. DeRobertis, 568 F.  
5 Supp. 8, 10 (N.D.Ill. 1982) (“[A prison] grievance procedure is a procedural right only, it does  
6 not confer any substantive right upon the inmates. Hence, it does not give rise to a protected  
7 liberty interest requiring the procedural protections envisioned by the fourteenth amendment”).  
8 Specifically, a failure to process a grievance does not state a constitutional violation. Buckley,  
9 supra. State regulations give rise to a liberty interest protected by the Due Process Clause of the  
10 federal constitution only if those regulations pertain to “freedom from restraint” that “imposes  
11 atypical and significant hardship on the inmate in relation to the ordinary incidents of prison  
12 life.” Sandin v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2293, 2300 (1995).<sup>2</sup> Plaintiff’s due  
13 process claims against these defendants, to the extent he has made any, will be dismissed but  
14 plaintiff will be granted leave to amend.

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
16 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See  
17 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms  
18 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless  
19 there is some affirmative link or connection between a defendant’s actions and the claimed  
20 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
21

22 <sup>2</sup> “[W]e recognize that States may under certain circumstances create liberty interests which  
23 are protected by the Due Process Clause. See also Board of Pardons v. Allen, 482 U.S. 369, 107  
24 S.Ct. 2415, 96 L.Ed.2d 303 (1987). But these interests will be generally limited to freedom from  
25 restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to  
protection by the Due Process Clause of its own force, see, e.g., Vitek v. Jones, 445 U.S. 480, 493,  
100 S.Ct. 1254, 1263-1264 (transfer to mental hospital), and Washington, 494 U.S. 210, 221- 222,  
110 S.Ct. 1028, 1036-1037 (involuntary administration of psychotropic drugs), nonetheless imposes  
26 atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.”  
Sandin v. Conner, supra.

1 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
2 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board  
3 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

4 In addition, plaintiff is informed that the court cannot refer to a prior pleading in  
5 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an  
6 amended complaint be complete in itself without reference to any prior pleading. This is  
7 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.  
8 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original  
9 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an  
10 original complaint, each claim and the involvement of each defendant must be sufficiently  
11 alleged.

12 In accordance with the above, IT IS HEREBY ORDERED that:

13 1. Plaintiff's request for leave to proceed in forma pauperis is granted.  
14 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

15 The fee shall be collected and paid in accordance with this court's order to the Director of the  
16 California Department of Corrections and Rehabilitation filed concurrently herewith.

17 3. The complaint is dismissed for the reasons discussed above, with leave to file  
18 an amended complaint within thirty days from the date of service of this order. Failure to file an  
19 amended complaint will result in a recommendation that the action be dismissed.

20 DATED: April 7, 2009

21 /s/ Gregory G. Hollows

22 UNITED STATES MAGISTRATE JUDGE

23  
24 GGH:009  
25 sly1783.bnF  
26