

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

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

SOKOL YANN,

Plaintiff,

No. CIV S-08-2152 GGH P

vs.

J. TILTON, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se.<sup>1</sup> 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).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28

\_\_\_\_\_

<sup>1</sup> This complaint was filed in this court on 9/12/08. By filing dated 10/02/08, plaintiff consented to the jurisdiction of the undersigned. Subsequently, for administrative purposes, and before this matter was screened, it was twice reassigned, on 11/25/08, and then again on 12/23/08 to other judges within this circuit. On 1/07/09, the reference was withdrawn and the matter was once again reassigned to the undersigned.

1 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$ 11.87 will be assessed by this  
2 order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to  
3 collect the initial partial filing fee from plaintiff’s trust account and forward it to the Clerk of the  
4 Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the  
5 preceding month’s income credited to plaintiff’s prison trust account. These payments will be  
6 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff’s  
7 account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

8           The court is required to screen complaints brought by prisoners seeking relief  
9 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
10 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised  
11 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be  
12 granted, or that seek monetary relief from a defendant who is immune from such relief. 28  
13 U.S.C. § 1915A(b)(1),(2).

14           A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
15 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
16 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
17 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
18 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
19 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
20 Cir. 1989); Franklin, 745 F.2d at 1227.

21           A complaint must contain more than a “formulaic recitation of the elements of a  
22 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the  
23 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).  
24 “The pleading must contain something more...than...a statement of facts that merely creates a  
25 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal  
26 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). In reviewing a complaint under this

1 standard, the court must accept as true the allegations of the complaint in question, Hospital  
2 Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light  
3 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v.  
4 McKeithen, 395 U.S. 411, 421 (1969).

5 Plaintiff, who identifies himself as a Cambodian, names as defendants High  
6 Desert State Prison (HDSP) Warden J. Tilton; HDSP B-Facility Captain Davey; HDSP  
7 Correctional Officer (C/O) Morris. Plaintiff states that, on or about January 17, 2008, he was put  
8 on suicide watch and moved to the central treatment center. Complaint, p. 3. He contends that  
9 defendant Morris rolled up his property into boxes, and that plaintiff's property was last seen  
10 "near the podium" by non-defendants C/O's Holt and Gooseman. *Id.* Plaintiff's 602 inmate  
11 appeals never received any response. *Id.* Plaintiff states that his property is presumed lost or  
12 destroyed and was valued at \$700.00. Plaintiff seeks money damages in compensation for his  
13 loss.

14 The United States Supreme Court has held that "an unauthorized intentional  
15 deprivation of property by a state employee does not constitute a violation of the procedural  
16 requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful  
17 postdeprivation remedy for the loss is available." Hudson v. Palmer, 468 U.S. 517, 533, 104 S.  
18 Ct. 3194 (1984); Taylor v. Knapp, 871 F.2d 803, 805 (9<sup>th</sup> Cir. 1989) ("[i]n Parratt v. Taylor, 451  
19 U.S. 527, 101 S. Ct. 1908 (1981),<sup>2</sup> the Court held that where a deprivation of property resulted  
20 from the unpredictable negligent acts of state agents, the availability of an adequate state post-  
21 deprivation remedy satisfied the requirement of due process.") Thus, where the state provides a  
22 meaningful post-deprivation remedy, only authorized, intentional deprivations constitute  
23 actionable violations of the Due Process Clause. An authorized deprivation is one carried out  
24 pursuant to established state procedures, regulations, or statutes. Piatt v. McDougall, 773 F.2d

---

25  
26 <sup>2</sup> Overruled on another ground by Daniels v. Williams, 474 U.S. 327, 330-331, 106 S. Ct.  
662, 664 (1986).

1 1032, 1036 (9th Cir. 1985); see also Knudson v. City of Ellensburg, 832 F.2d 1142, 1149 (9th  
2 Cir. 1987); The California Legislature has provided a remedy for tort claims against public  
3 officials in the California Government Code, §§ 900, et seq.

4           In the instant case, plaintiff has not alleged any facts which suggest that the loss or  
5 destruction of his property was authorized; under the facts as alleged, plaintiff makes at best a  
6 claim for negligence, a state law tort claim, which is not an allegation that rises to the level of a  
7 deprivation of a federal constitutional right. Plaintiff's claims for the loss of his property will  
8 therefore be dismissed, but plaintiff will be granted leave to amend within thirty days.

9           To the extent that he seeks to implicate any or all of the named defendants for a  
10 lack of response to his grievances, plaintiff is informed that prisoners do not have a "separate  
11 constitutional entitlement to a specific prison grievance procedure." Ramirez v. Galaza, 334  
12 F.3d 850, 860 (9th Cir. 2003), citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988). Even  
13 the non-existence of, or the failure of prison officials to properly implement, an administrative  
14 appeals process within the prison system does not raise constitutional concerns. Mann v. Adams,  
15 855 F.2d 639, 640 (9th Cir. 1988). See also, Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir.  
16 1993); Flick v. Alba, 932 F.2d 728 (8th Cir. 1991). Azeez v. DeRobertis, 568 F. Supp. 8, 10  
17 (N.D.Ill. 1982) ("[A prison] grievance procedure is a procedural right only, it does not confer any  
18 substantive right upon the inmates. Hence, it does not give rise to a protected liberty interest  
19 requiring the procedural protections envisioned by the fourteenth amendment"). Specifically, a  
20 failure to process a grievance does not state a constitutional violation. Buckley, supra. State  
21 regulations give rise to a liberty interest protected by the Due Process Clause of the federal  
22 constitution only if those regulations pertain to "freedom from restraint" that "imposes atypical  
23 and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin  
24 v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2293, 2300 (1995).<sup>3</sup> Therefore, to the extent plaintiff

---

25  
26 <sup>3</sup> "[W]e recognize that States may under certain circumstances create liberty interests  
which are protected by the Due Process Clause. See also Board of Pardons v. Allen, 482 U.S.

1 may have intended to allege due process claims against any or all of these defendants, those  
2 claims will be dismissed but plaintiff will be granted leave to amend.

3           If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
4 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
5 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms  
6 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless  
7 there is some affirmative link or connection between a defendant's actions and the claimed  
8 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
9 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
10 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board  
11 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

20 \\\

21 \\\

22 \_\_\_\_\_  
23 369, 107 S.Ct. 2415, 96 L.Ed.2d 303 (1987). But these interests will be generally limited to  
24 freedom from restraint which, while not exceeding the sentence in such an unexpected manner as  
25 to give rise to protection by the Due Process Clause of its own force, see, e.g., Vitek v. Jones,  
26 445 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 atypical and significant hardship on the inmate in relation to the  
ordinary incidents of prison life." Sandin v. Conner, supra.

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

2 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

4 Plaintiff is assessed an initial partial filing fee of \$ 11.87. All fees shall be collected and paid in  
5 accordance with this court's order to the Director of the California Department of Corrections  
6 and Rehabilitation filed concurrently herewith.

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

10 DATED: January 14, 2009

11 /s/ Gregory G. Hollows

12 \_\_\_\_\_  
13 GREGORY G. HOLLOWES  
14 UNITED STATES MAGISTRATE JUDGE

15 GGH:009  
16 yam2152.b