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

ANTHONY RAUL BARRON,

Plaintiff,

No. CIV S-11-2678 GGH P

vs.

MATTHEW CATE, 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 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 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff will be assessed an initial filing fee of \$20.00. Plaintiff is also obligated to make monthly payments of twenty percent of the preceding month’s income credited to plaintiff’s prison trust account. These payments shall be collected and forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff’s account

1 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). The court is required
2 to screen complaints brought by prisoners seeking relief against a governmental entity or officer
3 or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a
4 complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or
5 malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary
6 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

7 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
8 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
9 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
10 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
11 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
12 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
13 Cir. 1989); Franklin, 745 F.2d at 1227.

14 A complaint must contain more than a “formulaic recitation of the elements of a
15 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
16 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
17 “The pleading must contain something more...than...a statement of facts that merely creates a
18 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal
19 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient
20 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft
21 v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127
22 S.Ct. 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows
23 the court to draw the reasonable inference that the defendant is liable for the misconduct
24 alleged.” Id.

25 In reviewing a complaint under this standard, the court must accept as true the
26 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.

1 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,
2 and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.
3 1843 (1969).

4 Plaintiff's complaint names approximately 24 defendants, is 77 pages of facts and
5 then 169 pages of exhibits. While the main thrust of the complaint appears to be regarding
6 plaintiff's validation as a gang member, plaintiff alleges many violations of his due process in
7 disciplinary hearings and being placed in the SHU, excessive force that resulted in bruises on his
8 wrists and legs, poor living conditions and racial discrimination. The complaint reads almost
9 like a diary with daily or weekly entries from January 10, 2009, to August 1, 2010. However, it
10 is not the function of this overburdened court to cull through voluminous pages of facts and
11 exhibits to attempt to find cognizable claims. This court may not act as plaintiff's counsel.
12 While there may be viable claims in the complaint, many of the named defendants were barely
13 involved in the alleged deprivation and many simply denied appeals or served on an ICC
14 committee.

15 On the face of it, plaintiff has violated Rule 8(a)(2) of the Federal Rules of Civil
16 Procedure, which requires "a short and plain statement of the claim showing that the pleader is
17 entitled to relief..." Rule 8 requires "sufficient allegations to put defendants fairly on notice of
18 the claims against them." McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991)). Accord
19 Richmond v. Nationwide Cassel L.P., 52 F.3d 640, 645 (7th Cir. 1995) (amended complaint with
20 vague and scanty allegations fails to satisfy the notice requirement of Rule 8.) Even if the
21 factual elements of the cause of action are present, but are scattered throughout the complaint and
22 are not organized into a "short and plain statement of the claim," dismissal for failure to satisfy
23 Rule 8(a)(2) is proper. McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996) "The propriety of
24 dismissal for failure to comply with Rule 8 does not depend on whether the complaint is wholly
25 without merit." McHenry 84 F.3d at 1179.

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1 In addition, Fed. R. Civ. P. 18(a) provides: “A party asserting a claim to relief as
2 an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent
3 or as alternate claims, as many claims, legal, equitable, or maritime as the party has against an
4 opposing party.” “Thus multiple claims against a single party are fine, but Claim A against
5 Defendant 1 should not be joined with unrelated Claim B against Defendant 2.” George v.
6 Smith, 507 F.3d 605, 607 (7th Cir. 2007). “Unrelated claims against different defendants belong
7 in different suits[.]” Id.

8 It is true that Fed. R. Civ. P. 20(a) provides that “[p]ersons ...may be joined in one
9 action as defendants if: (A) any right is asserted against them jointly, severally, or in the
10 alternative with respect to or arising out of the same transaction, occurrence, or series of
11 transactions or occurrences; and (B) any question of law or fact common to all defendants will
12 arise in the action.” However, “[a] buckshot complaint that would be rejected if filed by a free
13 person – say, a suit complaining that A defrauded the plaintiff, B defamed him, C punched him,
14 D failed to pay a debt, and E infringed his copyright, all in different transactions – should be
15 rejected if filed by a prisoner.” Id. at 607.

16 Plaintiff’s complaint is dismissed but plaintiff will be granted 28 days to file an
17 amended complaint. Plaintiff should focus on the defendants who were most involved in the
18 alleged constitutional violations. Failure to file an amended complaint will result in a
19 recommendation that this action be dismissed.

20 The Civil Rights Act under which this action was filed provides as follows:

21 Every person who, under color of [state law] . . . subjects, or causes
22 to be subjected, any citizen of the United States . . . to the
23 deprivation of any rights, privileges, or immunities secured by the
24 Constitution . . . shall be liable to the party injured in an action at
25 law, suit in equity, or other proper proceeding for redress.

26 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362

1 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
2 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
3 omits to perform an act which he is legally required to do that causes the deprivation of which
4 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

5 Moreover, supervisory personnel are generally not liable under § 1983 for the
6 actions of their employees under a theory of respondeat superior and, therefore, when a named
7 defendant holds a supervisory position, the causal link between him and the claimed
8 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
9 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
10 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
11 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
12 Cir. 1982).

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

1 2300, 132 L.Ed.2d 418 (1995).¹

2 To the extent plaintiff has attempted to demonstrate a due process violation in his
3 description of various hearings, he is informed that, “[t]he requirements of procedural due
4 process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s
5 protection of liberty and property.” Board of Regents v. Roth, 408 U.S. 564, 569, 92 S.Ct. 2701
6 (1972). State statutes and prison regulations may grant prisoners liberty interests sufficient to
7 invoke due process protections. Meachum v. Fano, 427 U.S. 215, 223-27, 96 S.Ct. 2532 (1976).
8 However, the Supreme Court has significantly limited the instances in which due process can be
9 invoked. Pursuant to Sandin v. Conner, 515 U.S. 472, 483, 115 S.Ct. 2293 (1995), a prisoner
10 can show a liberty interest under the Due Process Clause of the Fourteenth Amendment only if he
11 alleges a change in confinement that imposes an “atypical and significant hardship ... in relation
12 to the ordinary incidents of prison life.” Id. at 484.

13 In this case, plaintiff has failed to establish a liberty interest protected by the
14 Constitution because he has not alleged, as he must under Sandin, facts related to the conditions
15 or consequences of his disciplinary hearings which show “the type of atypical, significant
16 deprivation [that] might conceivably create a liberty interest.” Id. at 486. For example, in
17 Sandin, the Supreme Court considered three factors in determining whether the plaintiff
18 possessed a liberty interest in avoiding disciplinary segregation: (1) the disciplinary versus
19 discretionary nature of the segregation; (2) the restricted conditions of the prisoner’s confinement
20 and whether they amounted to a “major disruption in his environment” when compared to those
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22 ¹ “[W]e recognize that States may under certain circumstances create liberty interests
23 which are protected by the Due Process Clause. See also Board of Pardons v. Allen, 482 U.S.
24 369, 107 S.Ct. 2415, 96 L.Ed.2d 303 (1987). But these interests will be generally limited to
25 freedom from restraint which, while not exceeding the sentence in such an unexpected manner as
26 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, 63 L.Ed.2d 552 (transfer to mental hospital), and
Washington, 494 U.S. 210, 221-222, 110 S.Ct. 1028, 1036-1037, 108 L.Ed.2d 178 (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 shared by prisoners in the general population; and (3) the possibility of whether the prisoner's
2 sentence was lengthened by his restricted custody. Id. at 486-87.

3 To establish a due process violation, plaintiff must first show the deprivation
4 imposed an atypical and significant hardship on him in relation to the ordinary incidents of prison
5 life. Sandin, 515 U.S. at 483-84. Plaintiff has failed to allege any facts from which the court
6 could find there were atypical and significant hardships imposed upon him as a result of
7 defendants' actions. Plaintiff must allege "a dramatic departure from the basic conditions" of his
8 confinement that would give rise to a liberty interest before he can claim a violation of due
9 process. Id. at 485. Plaintiff has not; therefore, the court finds that plaintiff has failed to allege a
10 liberty interest, and thus, has failed to state a due process claim.

11 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
12 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
13 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
14 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
15 there is some affirmative link or connection between a defendant's actions and the claimed
16 deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d
17 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,
18 vague and conclusory allegations of official participation in civil rights violations are not
19 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

1 alleged.

2 Plaintiff has also requested the appointment of counsel. The United States
3 Supreme Court has ruled that district courts lack authority to require counsel to represent
4 indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298
5 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of
6 counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
7 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the
8 court does not find the required exceptional circumstances as there is still no operative complaint
9 and plaintiff must narrow the claims he wishes to bring. Plaintiff's request for the appointment
10 of counsel will therefore be denied.

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

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

13 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
14 Plaintiff will be assessed an initial filing fee of \$20.00. The fee shall be collected and paid in
15 accordance with this court's order to the Director of the California Department of Corrections
16 and Rehabilitation filed concurrently herewith.

17 3. The complaint is dismissed for the reasons discussed above, with leave to file
18 an amended complaint, **not to exceed 30 pages in length including exhibits**, within twenty-
19 eight days from the date of service of this order. Failure to file an amended complaint will result
20 in a recommendation that the action be dismissed.

21 4. Plaintiff's motion to appoint counsel (Doc. 3) is denied without prejudice.

22 DATED: November 17, 2011

23 /s/ Gregory G. Hollows
24 UNITED STATES MAGISTRATE JUDGE

25 GGH: AB
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