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

DERRICK MOSLEY,

Plaintiff,

No. 2:12-cv-2681 JAM CKD P

vs.

BROYLES,

Defendant.

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 is 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 exceeds \$10.00, until the filing fee is paid in full. 28

1 U.S.C. § 1915(b)(2).

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

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

15           A complaint must contain more than a “formulaic recitation of the elements of a  
16 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the  
17 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). “The pleading must  
18 contain something more...than...a statement of facts that merely creates a suspicion [of] a legally  
19 cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal Practice and Procedure  
20 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient factual matter, accepted  
21 as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, \_\_\_ U.S. \_\_\_, 129  
22 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127 S.Ct. 1955). “A claim has  
23 facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
24 reasonable inference that the defendant is liable for the misconduct 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 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
2 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

3 Fed. R. Civ. P. 8 sets forth general rules of notice pleading in the federal courts.  
4 See Swierkiewicz v. Sorema, 534 U.S. 506, 122 S.Ct. 992 (2002). Complaints are required to set  
5 forth (1) the grounds upon which the court's jurisdiction rests, (2) a short and plain statement of  
6 the claim showing entitlement to relief; and (3) a demand for the relief plaintiff seeks. Rule 8  
7 requires only "sufficient allegations to put defendants fairly on notice of the claims against  
8 them." McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991). Even if the factual elements of  
9 the cause of action are present, but are scattered throughout the complaint and are not organized  
10 into a "short and plain statement of the claim," dismissal for failure to satisfy Rule 8(a)(2) is  
11 proper. McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996).

12 Plaintiff alleges that on February 15, 2011, when he was transferred to  
13 Administrative Segregation at San Quentin State Prison, defendant Broyles, a correctional officer  
14 at San Quentin, asked plaintiff to sign a property inventory. When plaintiff refused, Broyles  
15 confiscated plaintiff's fan, hot pot, and other personal property. Plaintiff further alleges that two  
16 unnamed correctional officers at High Desert State Prison<sup>1</sup> took plaintiff's shoes when he was  
17 transferred to HDSP in May 2011 and told them they would be returned to him, but the shoes  
18 were not returned. Plaintiff alleges that these defendants violated CDCR policy, state law, and  
19 plaintiff's federal rights to equal protection and due process of law.

20 The violation of state tort law, state regulations, rules and policies of the CDCR,  
21 or other state law is not sufficient to state a claim for relief under § 1983. To state a claim under  
22 § 1983, there must be a deprivation of federal constitutional or statutory rights. See Paul v.  
23 Davis, 424 U.S. 693 (1976). Although the court may exercise supplemental jurisdiction over  
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25 <sup>1</sup> "As a general rule, the use of 'John Doe' to identify a defendant is not favored." Gillespie  
26 v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). Moreover, absent a name, the court is unable to  
order service of process on the individual.

1 state law claims, plaintiff must first have a cognizable claim for relief under federal law. See 28  
2 U.S.C. § 1367.

3           The Due Process Clause protects prisoners from being deprived of property  
4 without due process of law, Wolff v. McDonnell, 418 U.S. 539, 556 (1974), and prisoners have a  
5 protected interest in their personal property, Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974).  
6 However, while an authorized, intentional deprivation of property is actionable under the Due  
7 Process Clause, see Hudson v. Palmer, 468 U.S. 517, 532, n. 13 (1984), neither negligent nor  
8 unauthorized intentional deprivations of property by a state employee “constitute a violation of  
9 the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a  
10 meaningful postdeprivation remedy for the loss is available,” Hudson, 468 U.S. at 533.  
11 California provides such a remedy. Barnett v. Centoni, 31 F.3d 813, 816–17 (9th Cir. 1994) (per  
12 curiam). Authorized deprivations of property are permissible if carried out pursuant to a  
13 regulation that is reasonably related to a legitimate penological interest. Turner v. Safley, 482  
14 U.S. 78, 89 (1987).

15           Here, plaintiff’s allegations that defendants violated state laws or policies are not  
16 cognizable under section 1983. Plaintiff also alleges an unauthorized intentional or negligent  
17 deprivation of his property by unnamed state employees at HDSP. This is not a violation of the  
18 Due Process Clause of the Fourteenth Amendment because California provides a meaningful  
19 post-deprivation remedy for the loss.

20           As to defendant Broyles, plaintiff attaches a property inventory form dated  
21 February 15, 2011 and signed by Broyles, stating that the following property was confiscated:

22           1 reading lamp = wrong name

23           1 Sony headphones = wrong name

24           1 hot pot = wrong name

25           1 fan = altered - no name

26           1 Curtis radio - scratched name

1                   2 [illegible] port extension cords = wrong name

2                   1 denim pants = altered worn out

3 (Dkt. No. 1 at 22.) Section 54030.12.1 of the CDCR Adult Institutions, Programs, and Parole  
4 Operations Manual (“DOM”) provides that inmate’s personal property items must be registered  
5 under the inmate’s name and number. Section 54030.12.2 provides that “[u]nauthorized inmate  
6 personal property, including that which is altered, exceeds volume limitations, or is beyond  
7 repair, shall be disposed of in accordance with the provisions of this section.” (2012 DOM  
8 available at [http://www.cdcr.ca.gov/Regulations/Adult\\_Operations/DOM\\_TOC.html](http://www.cdcr.ca.gov/Regulations/Adult_Operations/DOM_TOC.html).) From the  
9 attachments to the complaint, it appears that, insofar as Broyles’ confiscation of plaintiff’s  
10 property was an “authorized, intentional” deprivation, it was permissible under the reasonable  
11 regulations cited above. Thus plaintiff fails to state a federal due process claim as to this  
12 defendant.

13                   While plaintiff has failed to state a cognizable claim as to any defendant, he will  
14 be granted an opportunity to amend the complaint. If plaintiff chooses to amend the complaint,  
15 plaintiff must demonstrate how the conditions complained of have resulted in a deprivation of  
16 plaintiff’s constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the  
17 complaint must allege in specific terms how each named defendant is involved. There can be no  
18 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a  
19 defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v.  
20 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
21 1978). Furthermore, vague and conclusory allegations of official participation in civil rights  
22 violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

23                   In addition, plaintiff is informed that the court cannot refer to a prior pleading in  
24 order to make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended  
25 complaint be complete in itself without reference to any prior pleading. This is because, as a  
26 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375

1 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
2 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
3 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

4 Furthermore, any amended complaint shall not include allegations unrelated to the  
5 claims that are the subject of this action.

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

7 1. Plaintiff's motion to proceed in forma pauperis (Dkt. No. 7) is granted;

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

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

11 3. The complaint (Dkt. No. 1) is dismissed for the reasons discussed above, with  
12 leave to file an amended complaint within thirty days from the date of service of this order.

13 Failure to file an amended complaint will result in a recommendation that the action be  
14 dismissed.

15 Dated: February 13, 2013

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17 CAROLYN K. DELANEY  
18 UNITED STATES MAGISTRATE JUDGE

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