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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEON E. MORRIS,
Plaintiff,
v.
KEVIN DALY, BRYAN DONAHOO, and
PEREIRA,
Defendants.

No. 2:12-cv-02845 LKK JFM (PC)

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. 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.¹

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct

¹ The court previously determined that plaintiff could not proceed in forma pauperis because he had “three strikes” pursuant to 28 U.S.C. § 1915(g). ECF Nos. 6, 10. On July 5, 2013, the orders denying plaintiff’s leave to proceed in forma pauperis were vacated by order of the district judge assigned to this action. ECF No. 12. As a result, plaintiff’s motion to proceed in forma pauperis was reconsidered by the undersigned.

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

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

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

19 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
20 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
21 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
22 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
23 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
24 this standard, the court must accept as true the allegations of the complaint in question, Hospital
25 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
26 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
27 McKeithen, 395 U.S. 411, 421 (1969).

28 Plaintiff names three defendants in his complaint who are identified as appeals

1 coordinators. ECF No. 1. Plaintiff alleges the defendants are responsible for the processing of
2 his grievance forms and “have constantly interfered with and/or outright blocked [plaintiff’s]
3 right to file a 602 greivance [sic] against their co-horts.” Id. at 4. However, plaintiff’s complaint
4 contains only vague and conclusory allegations as to each defendant, and fails to set forth any
5 specific overt acts the defendants engaged in that resulted in a violation of his constitutional
6 rights.

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

23 The court finds the allegations in plaintiff’s complaint so vague and conclusory that it is
24 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
25 court has determined that the complaint does not contain a short and plain statement as required
26 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a
27 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones
28 v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at

1 least some degree of particularity overt acts which defendants engaged in that support plaintiff's
2 claim. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2),
3 the complaint must be dismissed. The court will, however, grant leave to file an amended
4 complaint.

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

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


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

- 22 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.
- 23 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
24 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
25 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
26 Director of the California Department of Corrections and Rehabilitation filed concurrently
27 herewith.
- 28 3. Plaintiff's complaint is dismissed.

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4. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and two copies of the amended complaint; failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

DATED: September 26, 2013



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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