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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT ANTHONY CALLENDER,
Plaintiff,
v.
J. RAMM, et. al.,
Defendants.

No. 2:16-cv-00694 JAM AC P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint (ECF No. 1), plaintiff has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. ECF No. 9.

I. Application to Proceed In Forma Pauperis

The court has reviewed plaintiff’s application and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

II. Screening Requirements

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

3 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
4 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
5 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
6 meritless legal theories or whose factual contentions are clearly baseless.” Jackson v. Arizona,
7 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute
8 on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490
9 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,
10 has an arguable legal and factual basis. Id.

11 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
12 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
13 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
14 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
15 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
16 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
17 allegations sufficient “to raise a right to relief above the speculative level.” Id. (citations
18 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
19 merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original)
20 (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d
21 ed. 2004)).

22 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
23 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell
24 Atl. Corp., 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
25 content that allows the court to draw the reasonable inference that the defendant is liable for the
26 misconduct alleged.” Id. (citing Bell Atl. Corp., 550 U.S. at 556). In reviewing a complaint
27 under this standard, the court must accept as true the allegations of the complaint in question,
28 Hospital Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), as well as construe the pleading

1 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor, Jenkins v.
2 McKeithen, 395 U.S. 411, 421 (1969).

3 **III. Screening Order**

4 Plaintiff alleges that the named defendants failed to adequately "secure and store" his
5 personal property on July 16, 2014. ECF No. 1 at 3. He claims defendants' actions violated his
6 due process rights and his rights under the California Department of Corrections and
7 Rehabilitations' (CDCR) 'Inmate Bill of Rights.' Id. After review of the complaint, the court
8 finds that plaintiff has failed to state a claim upon which relief may be granted.

9 First, plaintiff may not bring a section 1983 action against defendant CDCR. See Brown
10 v. California Dep't. of Corr., 554 F.3d 747, 752 (9th Cir. 2009) ("The district court correctly held
11 that the California Department of Corrections and the California Board of Prison Terms were
12 entitled to Eleventh Amendment immunity."); Maldonado v. Harris, 370 F.3d 945, 951 (9th Cir.
13 2004) ("State agencies . . . are not 'persons' within the meaning of § 1983, and are therefore not
14 amenable to suit under that statute.").

15 Second, claims premised on violations of the 'Inmate Bill of Rights' or other prison
16 regulations are not cognizable in a section 1983 action. See Nurre v. Whitehead, 580 F.3d 1087,
17 1092 (9th Cir. 2009) ("All § 1983 claims must be premised on a constitutional violation."); see
18 also Lamon v. Cate, No. 1:09-cv-02220-OWW-SMS (PC), 2011 U.S. Dist. LEXIS 24469, 2011
19 WL 773046, *9 (E.D. Cal. February 28, 2011).

20 Third, plaintiff's due process claim based on the alleged deprivation of his personal
21 property is not cognizable. The Ninth Circuit has held that "a negligent or intentional deprivation
22 of a prisoner's property fails to state a claim under section 1983 if the state has an adequate post
23 deprivation remedy." Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir. 1994). California provides
24 such a remedy. Id. (citing Cal. Gov't Code §§ 810-895). The matter might be different if
25 plaintiff alleged that the deprivation of his property was not random or unauthorized, but instead
26 the result of some "established state procedure." See Logan v. Zimmerman Brush Co., 455 U.S.
27 422, 435-436 (1982). Nothing in the complaint can be construed to state such a claim, however.

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1 Based on the foregoing, plaintiff's complaint will be dismissed and he will be given leave
2 to amend.

3 **IV. Leave to Amend**

4 Plaintiff's complaint is dismissed with leave to amend. If plaintiff chooses to file an
5 amended complaint it should observe the following:

6 Any amended complaint must identify as a defendant only persons who personally
7 participated in a substantial way in depriving him of a federal constitutional right. Johnson v.
8 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
9 constitutional right if he does an act, participates in another's act or omits to perform an act he is
10 legally required to do that causes the alleged deprivation).

11 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

12 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See
13 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

14 Any amended complaint must be written or typed so that it so that it is complete in itself
15 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
16 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
17 earlier filed complaint no longer serves any function in the case. See Forsyth v. Humana, 114
18 F.3d 1467, 1474 (9th Cir. 1997) (the "'amended complaint supersedes the original, the latter
19 being treated thereafter as non-existent.'" (quoting Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
20 1967)).

21 Finally, the court notes that any amended complaint should be as concise as possible in
22 fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of
23 procedural or factual background which has no bearing on his legal claims. He should also take
24 pains to ensure that his amended complaint is as legible as possible. This refers not only to
25 penmanship, but also spacing and organization. Lengthy, unbroken paragraphs can be difficult to
26 read when handwritten and plaintiff would do well to avoid them wherever possible.

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