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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

J.L. HOWZE,
Plaintiff,
v.
RICK MALMENDIER, et al.,
Defendants.

No. 2:16-cv-1737 GEB KJN P

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 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). 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 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
7 monetary relief from a defendant who is immune from such relief. 28 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 (9th
10 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, or portion thereof, should only be dismissed for failure to state a claim upon
16 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
17 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
18 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
19 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
20 this standard, the court must accept as true the allegations of the complaint in question, Hosp.
21 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
22 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
23 McKeithen, 395 U.S. 411, 421 (1969).

24 Plaintiff names as defendants R. Malmendier, Appeals Coordinator, and A. Brager,
25 AGPA.¹ Plaintiff asserts that defendants violated plaintiff's due process rights by refusing to
26 process and cancelling various administrative appeals. As a result of their actions, plaintiff avers
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28 ¹ Plaintiff does not define the meaning of the acronym, AGPA. (ECF No. 1 at 2, 3.)

1 that his case no. 2:14-cv-2069 GEB CKD was dismissed for failure to exhaust administrative
2 remedies. In addition, plaintiff raises allegations of fraud, claiming that defendants' failure to
3 assign a log number to his appeal was a breach of their legal duty and therefore constitutes fraud.
4 Plaintiff seeks money damages and injunctive relief in the form of requiring defendants to process
5 all ADA-related administrative appeals.

6 The Due Process Clause protects plaintiff against the deprivation of liberty without the
7 procedural protections to which he is entitled under the law. Wilkinson v. Austin, 545 U.S. 209,
8 221 (2005). However, plaintiff has no stand-alone due process rights related to the administrative
9 grievance process. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v. Adams, 855
10 F.2d 639, 640 (9th Cir. 1988). A prison official's denial of a grievance does not itself violate the
11 constitution. Evans v. Skolnik, 637 Fed. Appx. 285, 288 (9th Cir. 2015), cert. dism'd, 136 S. Ct.
12 2390 (2016). Thus, the denial, rejection, or cancellation of a grievance does not constitute a due
13 process violation. See, e.g., Wright v. Shannon, 2010 WL 445203, at *5 (E.D. Cal. Feb. 2, 2010)
14 (plaintiff's allegations that prison officials denied or ignored his inmate appeals failed to state a
15 cognizable claim under the First Amendment); Towner v. Knowles, 2009 WL 4281999 at *2
16 (E.D. Cal. Nov. 20, 2009) (plaintiff's allegations that prison officials screened out his inmate
17 appeals without any basis failed to indicate a deprivation of federal rights); Williams v. Cate,
18 2009 WL 3789597, at *6 (E.D. Cal. Nov. 10, 2009) ("Plaintiff has no protected liberty interest in
19 the vindication of his administrative claims."). Thus, plaintiff's claims that defendants violated
20 his due process rights in failing to properly process his administrative appeals and allegedly
21 committed fraud during such process are dismissed without leave to amend.

22 However, within his due process claims, plaintiff alleges that his civil rights complaint in
23 Howze v. CDCR, No. 2:14-cv-2069 GEB CKD, was dismissed based on plaintiff's failure to
24 exhaust his administrative remedies. It appears that plaintiff may be able to state a cognizable
25 access to the courts claim.

26 Prisoners have a First Amendment right to access to the courts. See Lewis v. Casey, 518
27 U.S. 343, 346 (1996). Prisoners have no freestanding right to a prison grievance process, see
28 Ramirez, 334 F.3d at 860, but "a prisoner's fundamental right of access to the courts hinges on

1 his ability to access the prison grievance system.” Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir.
2 1995), overruled on other grounds by Shaw v. Murphy, 532 U.S. 223, 230 n.2 (2001). To state a
3 viable claim that his right to access the courts has been violated, a plaintiff must have suffered an
4 “actual injury” by being shut out of court. Christopher v. Harbury, 536 U.S. 403, 415 (2002).
5 Therefore a correctional officer’s active interference with an inmate’s appeal may be the basis of
6 a claim under the First Amendment if that action disabled the inmate from pursuing litigation in
7 court. See Navarro v. Herndon, 2012 WL 6097112 at *2 (E.D. Cal. Dec. 7, 2012). The right of
8 access to the courts applies to nonfrivolous direct criminal appeals, habeas corpus proceedings,
9 and Section 1983 actions. Lewis, 518 U.S. at 353 n.3, 354-55. Therefore, plaintiff is granted
10 leave to file an amended complaint to plead a First Amendment access to the courts claim.

11 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
12 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.
13 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how
14 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there
15 is some affirmative link or connection between a defendant’s actions and the claimed deprivation.
16 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
17 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
18 allegations of official participation in civil rights violations are not sufficient. Ivey v. Bd. of
19 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 order to
21 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended
22 complaint be complete in itself without reference to any prior pleading. This requirement 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
27 alleged.

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1 Plaintiff is not required to provide exhibits to his amended complaint. Plaintiff previously
2 provided exhibits with his original complaint. Any party may refer to such exhibits, or plaintiff
3 may ask the Court Clerk to append the previous exhibits to his amended complaint.

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

5 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 10) is granted.

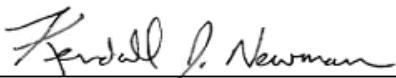
6 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
7 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
8 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
9 Director of the California Department of Corrections and Rehabilitation filed concurrently
10 herewith.

11 3. Plaintiff's complaint is dismissed.

12 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
13 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
14 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
15 assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and
16 two copies of the amended complaint.

17 Failure to file an amended complaint in accordance with this order will result in a
18 recommendation that this action be dismissed.

19 Dated: May 3, 2017

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21 _____
22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE

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