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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA MARCUS BUSH,
Plaintiff,
v.
KORY L. HONEA, et al.,
Defendants.

No. 2:17-cv-0009-EFB P

ORDER GRANTING IFP AND SCREENING
COMPLAINT PURSUANT TO 28 U.S.C. §
1915A

Plaintiff is a county inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Request to Proceed In Forma Pauperis

Plaintiff’s application 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 Requirement and Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
3 relief.” *Id.* § 1915A(b).

4 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
5 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
6 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
7 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
8 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
9 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
10 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
11 U.S. 662, 679 (2009).

12 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
13 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
14 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
15 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
16 678.

17 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
18 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
19 content that allows the court to draw the reasonable inference that the defendant is liable for the
20 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
21 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
22 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
23 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

24 **III. Screening Order**

25 The court has reviewed plaintiff’s complaint (ECF No. 1) pursuant to § 1915A and finds
26 that the allegations are not sufficient to state a proper claim for relief. The “Statement of Claim”
27 alleged in the complaint consists of the following:

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1 Robert Hadley has denied my due process rights and many others as well. He is
2 extremely unprofessional and denies access to legal avenues in place to allow
relief and to allow inmates to voice their grievances in citizen's complaints.

3 Any Duch is the Jail Commander and in effect is R. Hadley's supervisor and
4 allows all this and more to occur and will not respond to inquiries.

5 Kory Honea is the Sheriff and does not allow the proper process to be used for
6 citizen's complaints wick [sic] violates peoples [sic] rights.

7 The Sheriff's Department because no one has come forward to put a stop to these
8 blatant and illegal/unconstitutional violations.

9 ECF No. 1, § IV. Under the applicable standards discussed below, plaintiff lacks standing to
10 assert the constitutional rights of others and the allegations are not otherwise sufficient to state a
11 proper claim for relief. To proceed, plaintiff must file an amended complaint.

12 First, plaintiff may only challenge violations of his own rights that result in an actual
13 injury. *Warth v. Seldin*, 422 U.S. 490, 499 (1975). He lacks standing to assert the constitutional
14 rights of others. *Id.* If a plaintiff has no standing, the court has no subject matter jurisdiction.
15 *Nat'l Wildlife Fed'n v. Adams*, 629 F.2d 587, 593 n. 11 (9th Cir. 1980) (“[B]efore reaching a
16 decision on the merits, we [are required to] address the standing issue to determine if we have
17 jurisdiction.”). There are three requirements that must be met for a plaintiff to have standing: (1)
18 the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest
19 which is both concrete and particularized and actual or imminent; (2) there must be a causal
20 connection between the injury and the conduct complained of; and (3) it must be likely that the
21 injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555,
22 560-61 (1992); *Wash. Legal Found. v. Legal Found. of Wash.*, 271 F.3d 835, 847 (9th Cir. 2001)
23 (en banc).

24 Second, the allegations regarding improper handling of inmate grievances are not
25 sufficient to state a proper due process claim. There are no constitutional requirements regarding
26 how a grievance system is operated. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003)
27 (holding that prisoner's claimed loss of a liberty interest in the processing of his appeals does not
28 violate due process because prisoners lack a separate constitutional entitlement to a specific

1 prison grievance system). Thus, plaintiff may not impose liability on a defendant simply because
2 he played a role in processing plaintiff's appeals or because the appeals process was otherwise
3 rendered unfair. *See Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993) (an administrative
4 "grievance procedure is a procedural right only, it does not confer any substantive right upon the
5 inmates. Hence, it does not give rise to a protected liberty interest requiring the procedural
6 protections envisioned by the fourteenth amendment." (internal quotations omitted)).

7 Third, the complaint fails to plead a proper claim for relief against the Butte County
8 Sheriff's Department because it does not allege that plaintiff was injured as a result of employees
9 acting pursuant to any policy or custom of Butte County. A municipal entity or its departments is
10 liable under section 1983 only if plaintiff shows that his constitutional injury was caused by
11 employees acting pursuant to the municipality's policy or custom. *Mt. Healthy City Sch. Dist.*
12 *Bd. of Ed. v. Doyle*, 429 U.S. 274, 280 (1977); *Monell v. New York City Dep't of Soc. Servs.*, 436
13 U.S. 658, 691 (1978); *Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d 950, 964 (9th Cir. 2008).
14 Local government entities may not be held vicariously liable under section 1983 for the
15 unconstitutional acts of its employees under a theory of respondeat superior. *See Board of Cty.*
16 *Comm'rs. v. Brown*, 520 U.S. 397, 403 (1997).

17 For these reasons, the complaint is dismissed with leave to amend. Plaintiff will be
18 granted leave to file an amended complaint, if he can allege a cognizable legal theory against a
19 proper defendant and sufficient facts in support of that cognizable legal theory. *Lopez v. Smith*,
20 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*) (district courts must afford pro se litigants an
21 opportunity to amend to correct any deficiency in their complaints). Should plaintiff choose to
22 file an amended complaint, the amended complaint shall clearly set forth the claims and
23 allegations against each defendant. Any amended complaint must cure the deficiencies identified
24 above and also adhere to the following requirements:

25 Any amended complaint must identify as a defendant only persons who personally
26 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
27 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a

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1 constitutional right if he does an act, participates in another's act or omits to perform an act he is
2 legally required to do that causes the alleged deprivation).

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

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

6 Any amended complaint must be written or typed so that it so that it is complete in itself
7 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
8 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
9 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
10 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
11 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
12 1967)).

13 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
14 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.
15 *See* E.D. Cal. L.R. 110.

16 **IV. Summary of Order**

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's request to proceed in forma pauperis (ECF Nos. 4, 9) is granted.
- 19 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
20 in accordance with the notice to the Butte County Sheriff filed concurrently
21 herewith.
- 22 3. The complaint is dismissed with leave to amend within 30 days. The amended
23 complaint must bear the docket number assigned to this case and be titled “Third
24 Amended Complaint.” Failure to comply with this order will result in dismissal of
25 this action for failure to prosecute.

26 Dated: May 1, 2017.

27 
28 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE