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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 CLEVELAND EVANS,

12 Plaintiff,

13 v.

14 T. FOSS, et al.,

15 Defendants.
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No. 2:17-cv-1088 GEB KJN P

ORDER

17 Plaintiff is a state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C.
18 § 1983, and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This
19 proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

20 Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a).
21 Accordingly, the request to proceed in forma pauperis will be granted.

22 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C.
23 §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in
24 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct
25 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and
26 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly
27 payments of twenty percent of the preceding month's income credited to plaintiff's trust account.
28 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 when 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), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
17 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
19 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
22 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
23 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
24 sufficient "to raise a right to relief above the speculative level." Id. at 555. However, "[s]pecific
25 facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what
26 the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93
27 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).
28 In reviewing a complaint under this standard, the court must accept as true the allegations of the

1 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most
2 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other
3 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 Plaintiff alleges that defendants have “continuously” violated his First Amendment right
5 to correspond with his brother. In November of 2002, prison officials at California Substance
6 Abuse Treatment Facility in Corcoran (“SATF”) granted plaintiff permission to correspond with
7 his brother, inmate Thomas Evans. Plaintiff contends that his January 3, 2016 letter to his brother
8 was improperly rejected by officials at High Desert State Prison (“HDSP”), and such rejection
9 served no legitimate penological objective. Plaintiff states that by July of 2008, prison officials at
10 HDSP were aware of the approval to correspond, but that he has been denied correspondence at
11 least five times since the initial approval was granted fourteen years ago. (ECF No. 1 at 6.)

12 A. First Amendment Claim

13 Prisoners enjoy a First Amendment right to send and receive mail. Witherow v. Paff, 52
14 F.3d 264, 265 (9th Cir. 1995) (citing Thornburgh v. Abbott, 490 U.S. 401, 407 (1989)). Prison
15 officials have a responsibility to forward mail to inmates promptly. Bryan v. Werner, 516 F.2d
16 233, 238 (3d Cir. 1975). However, a temporary delay or isolated incident of delay or other mail
17 interference without evidence of improper motive does not violate a prisoner’s First Amendment
18 rights. See Crofton v. Roe, 170 F.3d 957, 961 (9th Cir. 1999) (temporary delay in delivery of
19 publications did not violate First Amendment). “Absent evidence of a broader plan or course of
20 conduct to censor plaintiff’s mail unconstitutionally, an honest error by prison officials does not
21 justify relief under § 1983.” Watkins v. Curry, 2011 WL 5079532, at *3 (N.D. Cal. Oct. 25,
22 2011) (citing Lingo v. Boone, 402 F. Supp. 768, 773 (C.D. Cal. 1975) (prisoner not entitled to
23 monetary relief under section 1983 where prison officials erroneously withheld a single piece of
24 mail on the grounds that it was inflammatory)); see also Smith v. Maschner, 899 F.2d 940, 944
25 (10th Cir. 1990) (defendants opened a single piece of legal mail by accident; “[s]uch an isolated
26 incident, without any evidence of improper motive or resulting interference with [the plaintiff]’s
27 right to counsel or to access to the courts, does not give rise to a constitutional violation”); Bach
28 v. Illinois, 504 F.2d 1100, 1102 (7th Cir. 1974) (one incident of mail mishandling insufficient to

1 show constitutional violation); cf. Antonelli v. Sheahan, 81 F.3d 1422, 1431-32 (9th Cir. 1996)
2 (plaintiff stated a claim where he alleged not merely negligent, but deliberate, obstruction of his
3 mail that resulted in mail delivery being delayed for an inordinate amount of time and sometimes
4 stolen).

5 Plaintiff's allegation that five incidents where letters to his brother were wrongfully
6 rejected over a 14 year period constitutes a "continuous" violation of his right to correspond with
7 his brother is not plausible. Even if plaintiff alleges that two of his letters to his brother were
8 wrongfully rejected in 2016, such allegation, standing alone, is insufficient to demonstrate a
9 constitutional violation. Plaintiff points to no facts showing that any of the rejections were based
10 on improper motive; rather, it appears that each was an isolated error in the routine processing of
11 mail. Plaintiff identifies no individual who intended to intentionally interfere with or censor
12 plaintiff's mail to his brother. Although it appears that the mail was wrongfully rejected in light
13 of the permission plaintiff was granted, a simple error in rejecting a piece of mail does not rise to
14 the level of a constitutional violation.

15 B. Inmate Appeal Process

16 Plaintiff also appears to complain about responses to his administrative grievances.
17 However, a defendant's actions in responding to an inmate appeal, standing alone, cannot give
18 rise to any claims for relief under section 1983 for violation of due process. The Due Process
19 Clause protects plaintiff against the deprivation of liberty without the procedural protections to
20 which he is entitled under the law. Wilkinson v. Austin, 545 U.S. 209, 221 (2005). However,
21 plaintiff has no stand-alone due process rights related to the administrative grievance process.
22 Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v. Adams, 855 F.2d 639, 640 (9th
23 Cir. 1988). A prison official's denial of a grievance does not itself violate the constitution. Evans
24 v. Skolnik, 637 Fed. Appx. 285, 288 (9th Cir. 2015), cert. dism'd, 136 S. Ct. 2390 (2016). Thus,
25 the denial, rejection, or cancellation of a grievance does not constitute a due process violation.
26 See, e.g., Wright v. Shannon, 2010 WL 445203, at *5 (E.D. Cal. Feb. 2, 2010) (plaintiff's
27 allegations that prison officials denied or ignored his inmate appeals failed to state a cognizable
28 claim under the First Amendment); Towner v. Knowles, 2009 WL 4281999 at *2 (E.D. Cal. Nov.

20, 2009) (plaintiff's allegations that prison officials screened out his inmate appeals without any basis failed to indicate a deprivation of federal rights); Williams v. Cate, 2009 WL 3789597, at *6 (E.D. Cal. Nov. 10, 2009) ("Plaintiff has no protected liberty interest in the vindication of his administrative claims."). Therefore, plaintiff's due process claims challenging the manner in which his administrative appeals were handled must also be dismissed.

C. Conclusion

Because plaintiff fails to allege facts demonstrating a constitutional violation, his complaint must be dismissed. In an abundance of caution, however, the court will grant leave to file an amended complaint.

If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions about which he complains resulted in a deprivation of plaintiff's constitutional rights. Rizzo v. Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

A district court must construe a pro se pleading "liberally" to determine if it states a claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an opportunity to cure them. See Lopez, 203 F.3d at 1130-31. While detailed factual allegations are not required, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp., 550 U.S. at 555). Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft, 556 U.S. at 678 (quoting Bell Atlantic Corp., 550 U.S. at 570).

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully.

1 Where a complaint pleads facts that are merely consistent with a
2 defendant's liability, it stops short of the line between possibility
 and plausibility of entitlement to relief.

3 Ashcroft, 556 U.S. at 678 (citations and quotation marks omitted). Although legal conclusions
4 can provide the framework of a complaint, they must be supported by factual allegations, and are
5 not entitled to the assumption of truth. Id. at 1950.

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

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

15 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
17 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
18 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
19 Director of the California Department of Corrections and Rehabilitation filed concurrently
20 herewith.

21 3. Plaintiff's complaint is dismissed.

22 4. Within thirty days from the date of this order, plaintiff shall complete the attached
23 Notice of Amendment and submit the following documents to the court:

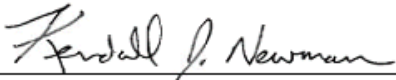
24 a. The completed Notice of Amendment; and

25 b. An original and one copy of the Amended Complaint.

26 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
27 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
28 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

1 Failure to file an amended complaint in accordance with this order may result in the
2 dismissal of this action.

3 Dated: June 14, 2017

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5 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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T. FOSS, et al.,

Defendants.

No. 2:17-cv-1088 GEB KJN P

NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order
filed_____.

DATED: _____ Amended Complaint

Plaintiff