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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 JIHAD AL-HAKIM PURDY,

12 Plaintiff,

13 v.

14 ROBERT W. FOX, et al.,

15 Defendants.  
16

No. 2:17-cv-2518 TLN CKD P

ORDER

17 Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. §  
18 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. §  
19 636(b)(1).

20 Plaintiff requests leave to proceed in forma pauperis. Since plaintiff has submitted a  
21 declaration that makes the showing required by 28 U.S.C. § 1915(a), his request 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 separate order, the court will direct the appropriate agency to collect the  
24 initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court.  
25 Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding  
26 month's income credited to plaintiff's prison trust account. These payments will be forwarded by  
27 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account  
28 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

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

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
8 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
10 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
11 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
12 Cir. 1989); Franklin, 745 F.2d at 1227.

13 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
14 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
15 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
16 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
17 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim  
18 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
19 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
20 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.  
21 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
22 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and  
23 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416  
24 U.S. 232, 236 (1974).

25 The court has reviewed plaintiff’s complaint and finds that plaintiff may proceed on  
26 claims arising under the Free Exercise Clause of the First Amendment against defendants Scott  
27 and Rhinehart detailed in claim I of plaintiff’s complaint. As for the other defendants and claims  
28 identified in his complaint, plaintiff fails to state a claim upon which he may proceed.

1 At this point, plaintiff has two options; he may proceed on the claims described above, or  
2 he can attempt to cure some or all of the deficiencies in his complaint by submitting an amended  
3 complaint. Plaintiff will be granted 30 days within which to submit an amended complaint. If  
4 plaintiff does not submit an amended complaint within 30 days, this action will proceed on the  
5 claims described above.

6 As to the contents of his amended complaint, plaintiff is informed as follows:

7 1. In his original complaint, plaintiff asserts several different claims against several  
8 different defendants. In general, a plaintiff may assert as many claims as he likes against a  
9 particular defendant. Claims against other defendants, however, must be related to a claim  
10 against the first as described in Federal Rule of Civil Procedure 20(a)(2). For example, if a claim  
11 against a second defendant arose out of the same incident as a claim against the first, the claim  
12 against the second defendant may be included in the complaint.

13 2. Plaintiff identifies several persons as defendants without adequately identifying how  
14 they took action amounting to a violation of plaintiff's civil rights. For example, plaintiff  
15 identifies certain persons as defendants because they denied or did not process inmate grievances.  
16 But, generally speaking, an inmate has no freestanding constitutional right to a prison or jail  
17 grievance procedure. Ramirez v. Galazza, 334 F.3d 850, 860 (9th Cir. 2003). Also, where  
18 plaintiff may have suffered injury which may amount to a violation, plaintiff identifies defendants  
19 not adequately linked to the injury. There can be no liability under 42 U.S.C. § 1983 unless there  
20 is some affirmative link or connection between a defendant's actions and the claimed deprivation.  
21 Rizzo v. Goode, 423 U.S. 362 (1976).

22 3. The United States Supreme Court has held that "an unauthorized intentional  
23 deprivation of property by a state employee does not constitute a violation of the procedural  
24 requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful post-  
25 deprivation remedy for the loss is available." Hudson v. Palmer, 468 U.S. 517, 533 (1984).  
26 Thus, where the state provides a meaningful post-deprivation remedy, as California does, only  
27 authorized, intentional deprivations constitute actionable violations of the Due Process Clause.  
28 An authorized deprivation is one carried out pursuant to established state procedures, regulations,

1 or statutes. Piatt v. McDougall, 773 F.2d 1032, 1036 (9th Cir. 1985); see also Knudson v. City of  
2 Ellensburg, 832 F.2d 1142, 1149 (9th Cir. 1987).

3 4. In order to state a cognizable claim for violation of due process during things such as  
4 hearings concerning level of custody or prisoner disciplinary proceedings, plaintiff must allege  
5 facts which suggest that he was deprived of a protected liberty interest. Such liberty interests are  
6 “generally limited to freedom from restraint which, while not exceeding the sentence in such an  
7 unexpected manner as to give rise to protection by the Due Process Clause of its own force,  
8 [citations omitted], nonetheless imposes atypical and significant hardship on the inmate in  
9 relation to the ordinary incidents of prison life.” Sandin v. Connor, 515 U.S. 472, 484 (1995).

10 5. Plaintiff cannot be retaliated against for exercise of his First Amendment rights. In the  
11 prison context, a claim for First Amendment retaliation under § 1983 must establish five  
12 elements: “(1) an assertion that a state actor took some adverse action against an inmate (2)  
13 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's  
14 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate  
15 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567–68 (9th Cir. 2005).

16 6. A defendant can be liable for use of excessive force under the Fourteenth Amendment  
17 if the amount of force used was objectively unreasonable. Graham v. Connor, 490 U.S. 386, 397  
18 (1989). In making that determination, the court considers the facts and circumstances confronting  
19 the defendant, id., and the type and amount of force used, Chew v. Gates, 27 F.3d 1432, 1440 (9th  
20 Cir. 1994).

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

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

2 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
4 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
5 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
6 California Department of Corrections and Rehabilitation filed concurrently herewith.

7 3. Plaintiff is granted thirty days to file an amended complaint. The amended complaint  
8 must bear the docket number assigned this case and must be labeled "Amended Complaint."

9 4. The Clerk of the Court is directed to send plaintiff the court's form for filing a prisoner  
10 civil rights action.

11 5. If plaintiff does not submit an amended complaint within 30 days, this action will  
12 proceed on the claims arising under the Free Exercise Clause of the First Amendment against  
13 defendants Scott and Rhinehart detailed in claim I of plaintiff's complaint. Further, the court will  
14 recommend that all other claims and defendants be dismissed.

15 Dated: May 11, 2018



16 CAROLYN K. DELANEY  
17 UNITED STATES MAGISTRATE JUDGE

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