

1 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
2 “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[]
3 monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

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8 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as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

12 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
13 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
14 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
15 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
16 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
17 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,
18 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
19 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a
20 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the
21 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain
22 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
23 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur
24 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

25 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
26 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
27 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
28 content that allows the court to draw the reasonable inference that the defendant is liable for the

1 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
2 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
3 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
4 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
5 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

6 III. Complaint

7 The complaint alleges in sum as follows. On May 30, 2017, at High Desert State Prison
8 (HDSP) plaintiff received a Rules Violation Report (RVR) alleging that he had threatened to kill
9 Officer Bautista’s children. Plaintiff requested video footage, but it was not produced for the
10 initial disciplinary hearing or the rehearing. Plaintiff’s investigative employee failed to locate a
11 key defense witness. The evidence against plaintiff was fabricated and consisted of lies. He “was
12 framed.”¹

13 Plaintiff was found guilty and lost 150 days of credits. He also spent 30 days in
14 administrative segregation. He was moved to a different prison, and the transfer deprived him of
15 the opportunity to take certain classes that would have enhanced his parole chances. The
16 wrongful finding that he is a “child killer” effectively dooms his prospects for parole. He seeks
17 expungement of the RVR as well as damages.

18 IV. Failure to State a Claim

19 Claims One and Two assert that plaintiff’s procedural due process rights were violated at
20 the disciplinary hearing by the denial of audiovisual evidence (“the video footage in the building
21 as well as the program office,” ECF No. 19 at 3) and the investigative employee’s failure to
22 produce the testimony of an inmate porter known as Sly. The materials appended to the
23 complaint indicate that the videotape evidence was denied for lack of relevance, ECF No. 19 at
24 32, and that the investigative employee was unable to identify the witness known as Sly, id. at 36.

25 ¹ The administrative appeal documentation attached to the complaint reflects that plaintiff’s
26 defense was that he did not threaten to kill Officer Bautista’s children; rather, he told Officer
27 Bautista that he would ask God to take the children’s souls, and that if it was God’s will, God
28 would do so. See ECF No. 19 at 13. Officer Bautista maintained that plaintiff had directly
threatened to kill the children when he was release from prison. Id. at 15, 18. The statement was
witnessed by a second officer. Id. at 27.

1 Plaintiff does not specify what the video would have shown or what Sly would have said.

2 “Prison disciplinary proceedings are not part of a criminal prosecution, and the full
3 panoply of rights due a defendant in such proceedings does not apply.” Wolff v. McDonnell, 418
4 U.S. 539, 556 (1974) (citation omitted). Rather, with respect to prison disciplinary proceedings
5 that include the loss of good-time credits, an inmate must receive (1) twenty-four-hour advanced
6 written notice of the charges against him, id. at 563-64; (2) “a written statement by the factfinders
7 as to the evidence relied on and reasons for the disciplinary action,” id. at 564 (internal quotation
8 marks and citation omitted); (3) an opportunity to call witnesses and present documentary
9 evidence where doing so “will not be unduly hazardous to institutional safety or correctional
10 goals,” id. at 566; (4) assistance at the hearing if he is illiterate or if the matter is complex, id. at
11 570; and (5) a sufficiently impartial fact finder, id. at 570-71. As long as the five minimum Wolff
12 requirements are met in a prison disciplinary proceeding, due process has been satisfied. Walker
13 v. Sumner, 14 F.3d 1415, 1420 (9th Cir. 1994).

14 Plaintiff’s procedural due process claim fails for several reasons. First, the only defendant
15 named in the complaint is the warden of HDSP. In a civil rights action, the plaintiff must name as
16 defendants the individuals who caused the alleged violations of his rights. See Jones v. Williams,
17 297 F.3d 930, 934 (9th Cir. 2002); Ortez v. Washington County, State of Oregon, 88 F.3d 804,
18 809 (9th Cir. 1996). The body of plaintiff’s complaint does not identify, or name as defendants,
19 the individuals responsible for the decision to deny video evidence and the failure to present
20 particular witness testimony. There are no facts indicating that Warden Spearman was personally
21 involved in these alleged violations of plaintiff’s rights. The warden is not automatically
22 responsible for the acts of his subordinates, because there is no respondeat superior liability under
23 section 1983. See Iqbal, supra, 556 U.S. at 676. Accordingly, plaintiff has failed to state any
24 claim for relief against the only named defendant.

25 On the merits of the procedural due process issue, plaintiff has not provided facts which
26 demonstrate a denial of the minimum protections guaranteed by Wolff. There are no factual
27 allegations showing that the requested video footage would have been relevant, let alone
28 exculpatory. The exchange between plaintiff and Officer Bautista that formed the basis for the

1 charges took place in plaintiff's cell, during a search in which Officers Bautista and Ziehm found
2 inmate manufactured alcohol. Video surveillance footage of other parts of the building, including
3 the program office, would not have any obvious probative value as to what was said. Due process
4 requires the opportunity to present a defense, within limits; it does not require prison officials to
5 permit, let alone affirmatively obtain for an inmate's use, irrelevant evidence. See Wolff, 418
6 U.S. at 566.

7 There are also no facts indicating a due process violation in the investigative employee's
8 failure to identify and question a possible inmate witness known only as Sly. The IE questioned
9 another inmate witness who plaintiff had identified, ECF No. 19 at 36, and who appears from the
10 question posed to have been a percipient witness to the encounter.² The IE also presented
11 questions from plaintiff to numerous other witnesses. Id. at 32-37. Many of these questions were
12 disallowed on relevance grounds. Id. In any event, investigative employees are not required by
13 due process,³ so their acts and omissions do not implicate plaintiff's due process rights. See
14 Staggs v. Kelly, No. 2:18-cv-2843 KJN P, 2019 U.S. Dist. LEXIS 145906, at *6, 2019 WL
15 4034386, at *2 (E.D. Cal. Aug. 27, 2019) (collecting cases). Plaintiff's due process rights cannot
16 have been violated by the failure of prison officials to locate a potential witness who plaintiff was
17 unable to identify.

18 Claim Three alleges that the defects in the RVR hearing caused plaintiff to lose access to
19 early parole consideration under Proposition 57.⁴ Plaintiff cannot maintain a due process claim

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21 ² The inmate was asked whether he heard plaintiff threaten the lives of Officer Baustista's
22 children. The witness answered "No." Id.

23 ³ As established in Wolff, inmates do not have an automatic right to assistance at a disciplinary
24 hearing but may be entitled to assistance when they are illiterate or the issues are complex.
25 Wolff, 418 U.S. at 570. In regard to assistance at a disciplinary hearing, California prisons
26 distinguish between investigative employees and staff assistants. An investigative employee is
27 responsible for gathering information for a senior hearing officer or disciplinary hearing
28 committee by interviewing charged inmates, questioning all staff and inmates with relevant
information, and screening prospective witnesses. Cal. Code Regs. tit. 15, § 3318(a). An
investigative employee is assigned to assist a senior hearing officer or disciplinary hearing
committee, not the charged inmate. Id. In contrast, a staff assistant informs the charged inmate
of his rights and of disciplinary hearing procedures, advises and assists in the preparation for the
disciplinary hearing, and represents the inmate's position at the hearing. Id., § 3318(b).

⁴ Proposition 57 added Article 1, Section 32 to the California Constitution. It states in relevant

1 based on denial of early parole consideration, because he has no protected property interest in
2 parole. There is no right under the U.S. Constitution to be conditionally released before the
3 expiration of a valid sentence. Swarthout v. Cooke, 562 U.S. 216, 220 (2011); see also
4 Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 7 (1979) (there is no federal
5 constitutional right to parole). It follows that there is no constitutional right to parole
6 consideration. Proposition 57 is purely a creature of state law, and deprivation of any rights that
7 it creates therefore cannot be vindicated here. See 42 U.S.C. § 1983 (only deprivation of rights
8 secured by federal law is actionable under Section 1983); see also Langford v. Day, 110 F.3d
9 1380, 1389 (9th Cir. 1996) (state law issue cannot be transformed into federal law issue by
10 merely invoking due process). Accordingly, Claim Three fails to state a claim upon which relief
11 may be granted.

12 Plaintiff alleges throughout the complaint that the evidence against him on the RVR
13 charges was false. He does not attempt to state an independent cause of action on this basis, nor
14 could he do so. False statements by a correctional officer do not violate an inmate's
15 constitutional rights and cannot, based on alleged falsity alone, support a claim under 42 U.S.C. §
16 1983. See Buckley v. Gomez, 36 F. Supp. 2d 1216, 1222 (S.D. Cal. 1997) (prisoners have no
17 constitutional right to be free from wrongfully issued disciplinary reports), aff'd without opinion,
18 168 F.3d 498 (9th Cir. 1999); accord, Sprouse v. Babcock, 870 F.2d 450, 452 (8th Cir. 1989);
19 Freeman v. Rideout, 808 F.2d 949, 951 (2nd Cir. 1986); Hanrahan v. Lane, 747 F.2d 1137, 1141
20 (7th Cir. 1984). As long as prison disciplinary charges are supported by "some evidence," due
21 process is satisfied. Superintendent v. Hill, 472 U.S. 445, 454 (1985).

22 For all these reasons, the complaint fails to state a claim upon which relief may be
23 granted. The complaint therefore will not be served. Because plaintiff may be able to provide
24 additional factual allegations related to his procedural due process claim, he will be granted leave
25

26 part: "Parole consideration: Any person convicted of a nonviolent felony offense and sentenced to
27 state prison shall be eligible for parole consideration after completing the full term of his or her
28 primary offense," defined for these purposes as "the longest term of imprisonment imposed by the
court for any offense, excluding the imposition of an enhancement, consecutive sentence, or
alternative sentence." Cal. Const., art. I, § 32, subds. (a)(1), (a)(1)(A).

1 to amend. Because allegations of false charges, fabricated evidence, and denial of the benefit of
2 Proposition 57 cannot support any cognizable claim for relief, plaintiff is informed that the
3 undersigned will recommend dismissal of any purported causes of action based on such
4 allegations that are included in an amended complaint.

5 V. Leave to Amend

6 If plaintiff chooses to file a first amended complaint, he must demonstrate how the
7 conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo
8 v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how
9 each named defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th
10 Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link
11 or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy,
12 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official
13 participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266,
14 268 (9th Cir. 1982) (citations omitted).

15 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
16 his first amended complaint complete. Local Rule 220 requires that an amended complaint be
17 complete in itself without reference to any prior pleading. This is because, as a general rule, an
18 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
19 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
20 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
21 in subsequent amended complaint to preserve appeal). Once plaintiff files a first amended
22 complaint, the original complaint no longer serves any function in the case. Therefore, in an
23 amended complaint, as in an original complaint, each claim and the involvement of each
24 defendant must be sufficiently alleged.

25 VI. Plain Language Summary of this Order for a Pro Se Litigant

26 Your complaint will not be served because the facts you have alleged are not enough to
27 state a claim for relief. First, in a civil rights complaint you must name as defendants the
28 individuals who did the things you believe violated your rights. Because this is no longer a

1 habeas case, the warden does not appear to be a proper defendant. Second, the hearing officer
2 rejected your request for video evidence because it was irrelevant, and exclusion of irrelevant
3 evidence does not violate due process. You have not stated facts showing that relevant evidence
4 actually existed on videotape, or that the rejection of your request for the video violated due
5 process. Third, the IE's actions cannot support a due process claim because you have no due
6 process right to an IE. You also cannot base a constitutional claim on Proposition 57, false
7 disciplinary charges, or fabricated evidence.

8 You are being given the chance to amend your complaint, to name the proper defendants
9 and provide enough facts to show that your procedural due process rights were violated at the
10 RVR hearing.

11 If you choose to amend your complaint, the first amended complaint must include all of
12 the claims you want to make because the court will not look at the claims or information in the
13 original complaint. **Any claims not in the first amended complaint will not be considered.**

14 CONCLUSION

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

16 1. Plaintiff's complaint has been screened and found not to state a claim for relief.
17 Plaintiff is granted leave to amend.

18 2. Within thirty days from the date of service of this order, plaintiff may file an amended
19 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
20 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
21 number assigned this case and must be labeled "First Amended Complaint." Plaintiff must file an
22 original and two copies of the amended complaint. Failure to file an amended complaint in
23 accordance with this order will result in dismissal of this action.

24 3. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint
25 form used in this district.

26 DATED: May 4, 2021

27 
28 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE