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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRUCE KENDALL BENN,
Plaintiff,
v.
A. LUCCA, et al.,
Defendants.

No. 2:21-cv-00667-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request 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 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 the amount in plaintiff’s account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 **I. Screening Requirement**

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

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

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

26 **II. Allegations in the Complaint**

27 At all times relevant to the allegations in the complaint, plaintiff was an inmate at Deuel
28 Vocational Institution. Plaintiff alleges that defendant Lucca willfully falsified a report charging

1 him with a disciplinary infraction for over familiarity. While the alleged incident occurred on
2 September 24, 2020, defendant Lucca did not issue the disciplinary violation until October 1,
3 2020. Plaintiff also contends that defendant Enos, who was the senior hearing officer at his
4 disciplinary hearing, improperly found him guilty of this infraction. Also named as a defendant
5 in the complaint is Kathleen Allison, the Director of the California Department of Corrections and
6 Rehabilitation. As a remedy for this false report, plaintiff seeks compensatory damages as well as
7 declaratory and injunctive relief.

8 **III. Legal Standards**

9 The following legal standards are being provided to plaintiff based on his pro se status as
10 well as the nature of the allegations in his complaint.

11 **A. Linkage Requirement**

12 The civil rights statute requires that there be an actual connection or link between the
13 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
14 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
15 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a
16 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
17 in another’s affirmative acts or omits to perform an act which he is legally required to do that
18 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th
19 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must
20 link each named defendant with some affirmative act or omission that demonstrates a violation of
21 plaintiff’s federal rights.

22 **B. Supervisory Liability**

23 Government officials may not be held liable for the unconstitutional conduct of their
24 subordinates under a theory of respondeat superior. Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009)
25 (“In a § 1983 suit ... the term “supervisory liability” is a misnomer. Absent vicarious liability,
26 each Government official, his or her title notwithstanding is only liable for his or her own
27 misconduct.”). When the named defendant holds a supervisory position, the causal link between
28 the defendant and the claimed constitutional violation must be specifically alleged; that is, a

1 plaintiff must allege some facts indicating that the defendant either personally participated in or
2 directed the alleged deprivation of constitutional rights or knew of the violations and failed to act
3 to prevent them. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Taylor v. List, 880 F.2d
4 1040, 1045 (9th Cir. 1989); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978).

5 **C. False Reports**

6 A prisoner has no constitutionally-guaranteed immunity from being falsely or wrongly
7 accused of conduct that may lead to disciplinary sanctions. See Sprouse v. Babcock, 870 F.2d
8 450, 452 (8th Cir. 1989). As long as a prisoner is afforded procedural due process in the
9 disciplinary hearing, allegations of a fabricated charge generally fail to state a claim under section
10 1983. See Hanrahan v. Lane, 747 F.2d 1137, 1140– 41 (7th Cir. 1984). An exception exists
11 when the fabrication of charges infringed on the inmate's substantive constitutional rights, such as
12 when false charges are made in retaliation for an inmate's exercise of a constitutionally protected
13 right. See Sprouse, 870 F.2d at 452 (holding that filing of a false disciplinary charge in retaliation
14 for a grievance filed by an inmate is actionable under section 1983).

15 **D. Inmate Appeals**

16 The existence of a prison grievance procedure establishes a procedural right only and
17 “does not confer any substantive right upon the inmates.” Buckley v. Barlow, 997 F.2d 494, 495
18 (8th Cir. 1993) (citation omitted); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003)
19 (no liberty interest in processing of appeals because no entitlement to a specific grievance
20 procedure). This means that a prison official’s action in reviewing an inmate grievance cannot
21 serve as a basis for liability under Section 1983. Buckley, 997 F.2d at 495. “Only persons who
22 cause or participate in the violations are responsible. Ruling against a prisoner on an
23 administrative complaint does not cause or contribute to the violation. A guard who stands and
24 watches while another guard beats a prisoner violates the Constitution; a guard who rejects an
25 administrative complaint about a completed act of misconduct does not.” George v. Smith, 507
26 F.3d 605, 609-10 (7th Cir. 2007) (citations omitted).

27 **IV. Analysis**

28 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon

1 which relief can be granted under federal law. First, plaintiff does not allege a cognizable claim
2 against defendant Lucca who allegedly wrote the false report about plaintiff because there is no
3 allegation that it was written in retaliation for plaintiff's prior grievances or other protected
4 conduct. The complaint does not state a claim against defendant Enos who was merely the senior
5 hearing officer at the disciplinary hearing for the alleged false report. That is not actionable
6 conduct. Lastly, plaintiff fails to link defendant Allison to any alleged constitutional violation.
7 For all these reasons, plaintiff's complaint must be dismissed. The court will, however, grant
8 leave to file an amended complaint.

9 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
10 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
11 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
12 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
13 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
14 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
15 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
16 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

24 **V. Plain Language Summary for Pro Se Party**

25 The following information is meant to explain this order in plain English and is not
26 intended as legal advice.

27 The court has reviewed the allegations in your complaint and determined that they do not
28 state any claim against the defendants. Your complaint is being dismissed, but you are being

1 given the chance to fix the problems identified in this screening order.

2 Although you are not required to do so, you may file an amended complaint within 30
3 days from the date of this order. If you choose to file an amended complaint, pay particular
4 attention to the legal standards identified in this order which may apply to your claims.

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

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

7 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
8 shall be collected and paid in accordance with this court's order to the Director of the California
9 Department of Corrections and Rehabilitation filed concurrently herewith.

10 3. Plaintiff's complaint is dismissed.

11 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
12 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
13 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
14 number assigned this case and must be labeled "Amended Complaint." Failure to file an
15 amended complaint in accordance with this order will result in a recommendation that this action
16 be dismissed.

17 Dated: July 14, 2021



18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE

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