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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN DEROI SAWYER,
Plaintiff,
v.
KEVIN R. CHAPPELL, et al.,
Defendants.

Case No. [15-cv-00220-JD](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Re: Dkt. No. 3

Kevin Deroi Sawyer, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

I. STANDARD OF REVIEW

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). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

1 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
2 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its
3 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”
4 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they
5 must be supported by factual allegations. When there are well-pleaded factual allegations, a court
6 should assume their veracity and then determine whether they plausibly give rise to an entitlement
7 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by
9 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was
10 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

11 **II. LEGAL CLAIMS**

12 Sawyer states that defendants confiscated his writings, notes, quotes, and research material
13 in violation of the First and Fourth Amendment and improperly processed his administrative
14 appeals. He also alleges violation of the U.S Copyright Act. A prisoner retains those First
15 Amendment rights that are “not inconsistent with his status as a prisoner or with the legitimate
16 penological objectives of the corrections system.” *Prison Legal News v. Cook*, 238 F.3d 1145,
17 1149 (9th Cir. 2001) (quoting *Jones v. North Carolina Prisoners’ Labor Union, Inc.*, 433 U.S.
18 119, 129 (1977)) (internal quotation marks omitted). Accordingly, a prison regulation that
19 impinges on a prisoner’s First Amendment right to free speech is valid only “if it is reasonably
20 related to legitimate penological interests.” *Shaw v. Murphy*, 532 U. S. 223, 229 (2001) (citing
21 *Turner v. Safley*, 482 U.S. 78, 89 (1987)); *see, e.g., Hargis v. Foster*, 312 F.3d 404, 410 (9th Cir.
22 2002) (holding that rule subjecting prisoners to discipline for coercing a guard into not enforcing
23 prison rules was, on its face, reasonably related to legitimate penological interests).

24 A claim that the application of a prison regulation violated a prisoner-plaintiff’s First
25 Amendment right to free speech does not end if the regulation, on its face, satisfies the *Turner* test.
26 *Hargis*, 312 F.3d at 410. Although facially valid, the regulation may be unconstitutional as
27 applied to the prisoner-plaintiff. *See id.* at 410-12 (finding triable issue as to whether prison
28 officials’ discipline of a prisoner for coercion, for his statement to a prison guard that the guard’s

1 actions and statements could come up in pending state court litigation, violates the prisoner’s right
2 to free speech, when a jury could reasonably find that charging the prisoner with such a severe
3 disciplinary infraction was an exaggerated response to prisoner’s conduct).

4 With respect to the claim that the confiscation of his property was an unreasonable seizure
5 in violation of the Fourth Amendment, the Fourth Amendment does not proscribe unreasonable
6 searches or seizures of property in prison. *See Hudson v. Palmer*, 468 U.S. 517, 528 n.8, 536
7 (1984). Moreover, there is no constitutional right to a prison administrative appeal or grievance
8 system. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639,
9 640 (9th Cir. 1988). Sawyer’s claims that his Fourth Amendment rights were violated and that his
10 appeals were not granted or properly processed are dismissed.

11 Sawyer alleges that defendant Correctional Officer Cavagnolo seized Sawyer’s writings,
12 notes, quotes, research material, and other written material regarding the Black Guerilla Family
13 prison gang.¹ After filing inmate appeals, much of the property was returned, yet some of the
14 property remained confiscated. For purposes of screening, Sawyer has presented a cognizable
15 First Amendment claim against defendant Cavagnolo. Sawyer has also identified many other
16 defendants who are associate wardens or wardens of the prison along with other supervisor
17 defendants. However, he has failed to identify how they were specifically involved in the
18 confiscation of the property.

19 Supervisor defendants are entitled to qualified immunity where the allegations against
20 them are simply “bald” or “conclusory” because such allegations do not “plausibly” establish the
21 supervisors’ personal involvement in their subordinates’ constitutional wrong, *Iqbal*, 556 U.S. at
22 675-84 (noting no vicarious liability under Section 1983 or *Bivens* actions), and unfairly subject
23 the supervisor defendants to the expense of discovery and continued litigation, *Henry A. v.*
24 *Willden*, 678 F.3d 991, 1004 (9th Cir. 2012) (general allegations about supervisors’ oversight

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26 _____
27 ¹ Sawyer also received two “validation” points towards being a validated gang member of the
28 Black Guerilla Family and several defendants began investigating him to determine if was
involved with a prison gang. He has failed to set forth a valid claim that prison officials
investigating him for gang activity violated the First Amendment. Nor is it alleged that Sawyer
has been validated as a gang member.

1 responsibilities and knowledge of independent reports documenting the challenged conduct failed
2 to state a claim for supervisor liability). So it is insufficient for a plaintiff only to allege that
3 supervisors knew about the constitutional violation and that they generally created policies and
4 procedures that led to the violation, without alleging “a specific policy” or “a specific event”
5 instigated by them that led to the constitutional violations. *Hydrick v. Hunter*, 669 F.3d 937, 942
6 (9th Cir. 2012). Under no circumstances is there respondeat superior liability under section 1983,
7 which means there is no liability under section 1983 solely because one is purportedly responsible
8 for the actions or omissions of another. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

9 The complaint is dismissed with leave to amend. Sawyer must present more than
10 conclusory allegations to state a claim against the supervisor defendants. He must describe the
11 specific actions of these defendants. With respect to the allegation of a violation of the Copyright
12 Act, Sawyer has not presented any facts for the Court to consider the claim. He only states that his
13 copyrighted protected work was taken, but he does not describe the work or writings at issue nor
14 does he demonstrate an ownership of a valid copyright. He may present more information in the
15 amended complaint and identify the specific section of the Copyright Act that he relies upon.
16 Sawyer is also informed that in the amended complaint he must include the allegations against
17 defendant Cavagnolo because an amended complaint completely replaces the original complaint.

18 **CONCLUSION**


19 1. The complaint is **DISMISSED** with leave to amend. The amended complaint must
20 be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption
21 and civil case number used in this order and the words AMENDED COMPLAINT on the first
22 page. Because an amended complaint completely replaces the original complaint, plaintiff must
23 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
24 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to
25 amend within the designated time will result in the dismissal of all defendants except Cavagnolo
26 and this case will only proceed against him.

27 2. It is the plaintiff’s responsibility to prosecute this case. Plaintiff must keep the
28 Court informed of any change of address by filing a separate paper with the clerk headed “Notice

1 of Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to
2 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
3 Civil Procedure 41(b).

4 **IT IS SO ORDERED.**

5 Dated: July 29, 2015

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8 JAMES DONATO
9 United States District Judge
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2 NORTHERN DISTRICT OF CALIFORNIA

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6 KEVIN R. CHAPPELL, et al.,
7 Defendants.
8

Case No. [15-cv-00220-JD](#)

CERTIFICATE OF SERVICE

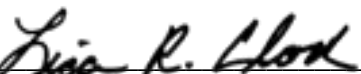
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on July 29, 2015, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 Kevin DeRoi Sawyer
18 P22673 1-W-69-U
19 San Quentin State Prison
20 San Quentin, CA 94974

21 Dated: July 29, 2015

22
23 Richard W. Wieking
24 Clerk, United States District Court

25
26 By: 
27 LISA R. CLARK, Deputy Clerk to the
28 Honorable JAMES DONATO