

1 IN THE UNITED STATES DISTRICT COURT
2
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4
5 MANUEL ARREOLA,
6 Petitioner,

No. C 12-06512 YGR (PR)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

7 v.

8 OFFICER CRABTREE,
9 Respondent.

10 This case was commenced when Petitioner filed a document captioned "Petition For A Writ
11 of Habeas Corpus." Petitioner alleges that prison officials at Salinas Valley State Prison have
12 violated his constitutional rights, including the following: "property damaged and intentionally lost,
13 denied prepared [sic] access to the courts, [and] retaliation by staff" (Pet. at 11.) Petitioner has
14 also filed an application to proceed *in forma pauperis* (IFP).

15 The petition does not challenge either the fact of Petitioner's conviction or the length of his
16 sentence. Rather, it goes entirely to the conditions of his confinement. A federal civil rights claim
17 under 42 U.S.C. § 1983, rather than a federal habeas petition, is the proper way to raise such claims.
18 *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action proper method of
19 challenging conditions of confinement); *Crawford v. Bell*, 599 F.2d 890, 891-92 & n.1 (9th Cir.
20 1979) (affirming dismissal of habeas petition because challenges to terms and conditions of
21 confinement must be brought as civil rights complaint). To state a claim under § 1983, a plaintiff
22 must allege two essential elements: (1) that a right secured by the Constitution or laws of the United
23 States was violated, and (2) that the alleged violation was committed by a person acting under the
24 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

25 While a district court may construe a habeas petition by a prisoner attacking the conditions of
26 his confinement as pleading civil rights claims under 42 U.S.C. § 1983, *see Wilwording v. Swenson*,
27 404 U.S. 249, 251 (1971), it is not appropriate to do so in this case. The habeas petition does not
28 include the information necessary to state a civil rights violation. It does not link the named

1 respondent to the claim, does not state who actually committed the violation complained of, does not
2 include a prayer for relief, such as damages or injunctive relief or both. It was not accompanied by
3 the correct filing fee for a civil rights case. Accordingly, the Court directs Petitioner to file a civil
4 rights complaint on the attached civil rights complaint form, stating his claims for relief, if he wishes
5 to go forward with this action as a civil rights action. The failure to file a completed civil rights
6 complaint as directed below will result in the dismissal of this action without prejudice.

7 Before filing his complaint, Petitioner must ensure that he has exhausted all of his
8 administrative remedies. The Prison Litigation Reform Act of 1995 (PLRA) amended 42 U.S.C.
9 § 1997e to provide that "[n]o action shall be brought with respect to prison conditions under [42
10 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other
11 correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C.
12 § 1997e(a). Although once within the discretion of the district court, exhaustion in prisoner cases
13 covered by 1997e(a) is now mandatory. *Porter v. Nussle*, 534 U.S. 516, 524 (2002). All available
14 remedies must now be exhausted; those remedies "need not meet federal standards, nor must they be
15 'plain, speedy, and effective.'" *Id.* (citation omitted). Even when the prisoner seeks relief not
16 available in grievance proceedings, notably money damages, exhaustion is a prerequisite to suit. *Id.*;
17 *Booth v. Churner*, 532 U.S. 731, 741 (2001). Similarly, exhaustion is a prerequisite to all prisoner
18 suits about prison life, whether they involve general circumstances or particular episodes, and
19 whether they allege excessive force or some other wrong. *Porter*, 534 U.S. at 532. The PLRA's
20 exhaustion requirement requires "proper exhaustion" of available administrative remedies.
21 *Woodford v. Ngo*, 548 U.S. 81, 94 (2006).

22 The State of California provides its prisoners the right to appeal administratively "any
23 departmental decision, action, condition or policy perceived by those individuals as adversely
24 affecting their welfare." Cal. Code Regs. tit. 15, § 3084.1(a). It also provides them the right to file
25 appeals alleging misconduct by correctional officers and officials. *Id.* 3084.1(e). In order to exhaust
26 available administrative remedies within this system, a prisoner must proceed through several levels
27 of appeal: (1) informal resolution; (2) formal written appeal on a CDC 602 inmate appeal form;
28 (3) second level appeal to the institution head or designee; and (4) third level appeal to the Director

1 of the California Department of Corrections and Rehabilitation. *Barry v. Ratelle*, 985 F. Supp. 1235,
2 1237 (S.D. Cal. 1997) (citing Cal. Code Regs. tit. 15, § 3084.5). A final decision from the Director's
3 level of review satisfies the exhaustion requirement under § 1997e(a). *Id.* at 1237-38.

4 CONCLUSION

5 For the foregoing reasons, Petitioner's case is DISMISSED with leave to amend. Petitioner
6 must file his complaint no later than **twenty-eight (28) days** from the date of this Order. Petitioner
7 must write the case number for this action -- Case No. C 12-06512 YGR (PR) -- on the form and
8 complete all sections of the form. Petitioner is particularly directed to name as defendants each
9 person who caused a violation of his constitutional rights and explain what each person did to cause
10 the violation. Liability under § 1983 arises only upon a showing of personal participation by the
11 defendant. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). There is no *respondeat superior*
12 liability under § 1983, i.e., no liability under the theory that a supervisor is responsible for the
13 actions or omissions of his or her subordinate. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir.
14 1988) (liability may be imposed on individual defendant under § 1983 only if plaintiff can show that
15 defendant proximately caused deprivation of federally protected right).

16 Because Petitioner originally filed this case as a habeas corpus action, his IFP application is
17 DENIED without prejudice to filing a new application or paying the full filing fee. The filing fee for
18 a civil rights action is \$350.00. Petitioner must pay the \$350.00 filing fee, or file an application for
19 leave to proceed IFP, before this action may proceed. If Petitioner is a prisoner who alleges that he
20 is unable to pay the full filing fee at the time of filing, he must submit: (1) an affidavit that includes a
21 statement of all assets he possesses, and (2) a certified copy of the trust fund account statement for
22 the prisoner for the six-month period immediately preceding the filing of the action, obtained from
23 the appropriate official of each prison at which the prisoner is or was confined. *See* 28 U.S.C.
24 § 1915(a)(1), (2). If the district court determines that the prisoner is unable to pay the full filing fee
25 at the time of filing, the prisoner will be granted leave to proceed IFP. This means that the filing fee
26 must be paid by way of an installment plan, according to which the court first will assess and collect
27 a partial filing fee from the prisoner, and then the prisoner will be required to make monthly
28 payments of twenty percent of the preceding month's income credited to the prisoner's account until

1 the full \$350.00 filing fee is paid. *Id.* § 1915(b)(1). The agency having custody of the prisoner is
2 responsible for forwarding to the court payments from the prisoner's account each time the amount
3 in the account exceeds ten dollars. *See id.* Accordingly, Petitioner is hereby ORDERED to pay the
4 requisite \$350.00 filing fee in this action no later than **twenty-eight (28) days** from the date of this
5 Order. He shall include with his payment a clear indication that it is for the above-referenced case
6 number, Case No. C 12-06512 YGR (PR). In the event that Petitioner is unable to pay the filing fee,
7 he shall submit an IFP application, trust account statement and certificate of funds no later than
8 **twenty-eight (28) days** from the date of this Order.

9 **Failure to file a completed civil rights form and to pay the filing fee or file the requisite**
10 **documents within the twenty-eight-day deadline shall result in dismissal of this action without**
11 **prejudice.**

12 The Clerk of the Court shall send Petitioner a blank civil rights form and the Court's prisoner
13 IFP application form along with his copy of this Order.

14 This Order terminates Docket no. 3.

15 IT IS SO ORDERED.

16 DATED: February 19, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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