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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ORION S. EHRINGER,  
  
Plaintiff,  
  
v.  
  
STATE OF CALIFORNIA,  
  
Defendant.

No. 2:15-cv-0985 KJM AC P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a former county jail inmate<sup>1</sup> proceeding pro se and in forma pauperis, seeks relief pursuant to 42 U.S.C. § 1983. By order filed June 19, 2015, plaintiff’s complaint was dismissed with leave to file an amended complaint. ECF No. 10. Plaintiff has now filed an amended complaint. ECF No. 15. In addition, plaintiff filed a motion for release, ECF No. 5, requests for appointment of counsel, ECF Nos. 17, 19, 20, and an “affidavit” regarding medical treatment, ECF No. 22

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<sup>1</sup> At the time plaintiff filed his complaint, he was detained at Wayne Brown Correctional Facility in Nevada City, California. It appears that plaintiff was in custody in on charges of making criminal threats and attempting to prevent and dissuade a witness, ECF No. 12 at 20, but was found incompetent to stand trial, see ECF No. 20 at 1-2. Plaintiff was recently transferred to Metropolitan State Hospital in Norwalk, California. See ECF No. 22.

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 when 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13 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
14 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
15 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at  
16 1227.

17 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain  
18 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
19 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
20 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
21 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a  
22 formulaic recitation of the elements of a cause of action;” it must contain factual allegations  
23 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555.  
24 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the  
25 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v.  
26 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal  
27 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as  
28 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the

1 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236  
2 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

3 II. Allegations of the First Amended Complaint

4 In his amended complaint, plaintiff alleges that “the State of California took [his] son  
5 from [him] while [he] was reporting a crime of a significant magnitude at one of the substations.”  
6 ECF No. 15 at 1-2. Plaintiff was not allowed or offered a phone call, “nor was California Code  
7 850 displayed.” Id. at 2. Plaintiff alleges that his son was kidnapped and held illegally for 75  
8 days. Plaintiff states that he wants “all parties involved to be brought up on appropriate charges,”  
9 “the two social workers who committed perjury” to be fired and tried for perjury, and the social  
10 workers in Sacramento County to be “fired for not inquiring into what [plaintiff] told them.”<sup>2</sup> Id.

11 In what appears to be a separate complaint on the following page,<sup>3</sup> plaintiff goes on to  
12 allege that the Plumas County Superior Court “illegally placed a domestic violence restraining  
13 order on [plaintiff].” ECF No. 15 at 3-4. Plaintiff writes, “This restraining order does not show  
14 up outside the Counties of Plumas and Sierra in the State of California. Why is that!” Id. at 4.  
15 Plaintiff requests that his record be cleared, his guns be returned, and all parties involved be fired.  
16 Id. at 4. In the alternative, plaintiff seeks damages. Id.

17 III. Discussion

18 Although plaintiff’s amended complaint is somewhat more specific than his original  
19 complaint, the court once again finds plaintiff’s allegations so vague and conclusory that it is  
20 unable to determine whether the current action is frivolous or fails to state a claim for relief. The  
21 court has determined that the amended complaint does not contain a short and plain statement as  
22 required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy,  
23 a complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones  
24 v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least  
25 some degree of particularity overt acts which defendants engaged in that support plaintiff’s claim.

26 \_\_\_\_\_  
27 <sup>2</sup> Plaintiff does not elaborate as to what he told the social workers.

28 <sup>3</sup> Page one of plaintiff’s filing is labeled “Amended Complaint,” while page three is labeled  
“Complaint.” See ECF no. 15 at 1, 3.

1 Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the  
2 complaint must be dismissed. However, plaintiff will be granted one final opportunity to amend  
3 his complaint.

4 A. Allegations Regarding Plaintiff's Son

5 Plaintiff makes a vague reference to social workers committing perjury and his son being  
6 taken from him and held illegally for 75 days, but provides no additional information in his  
7 amended complaint. See ECF No. 15 at 2. However, the court notes that in a separate motion,  
8 plaintiff asserts that "Sierra County . . . put [his] son in Sierra County Child Protection." ECF  
9 No. 5 at 1. Plaintiff also filed a number of miscellaneous exhibits (not attached to his amended  
10 complaint),<sup>4</sup> which indicate that on April 7, 2015, the Sierra County Superior Court declared  
11 plaintiff's biological son a dependent child of the court under California Welfare and Institutions  
12 Code § 300(b)(1).<sup>5</sup> See ECF No. 12 at 11. It appears that plaintiff's son, who had previously  
13 been living with plaintiff, was placed in a foster home and the location was not disclosed to  
14 plaintiff. See id. Thus, plaintiff's allegations and miscellaneous exhibits suggest that plaintiff  
15 may be attempting to contest his son's placement with Sierra County Child Protective Services  
16 and/or placement in a foster home in a "confidential location" in Sierra County.

17 Plaintiff's vague and conclusory claims regarding the "kidnapping" of his son must be

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19 <sup>4</sup> While the court is not obligated to consider plaintiff's piecemeal filings, the undersigned does  
20 so here in an attempt to shed light on the extremely vague allegations of plaintiff's amended  
21 complaint.

22 <sup>5</sup> California Welfare and Institutions Code § 300(b)(1) provides, in relevant part, that a child who  
23 comes within the following description is within the jurisdiction of the juvenile court which may  
24 adjudge that person to be a dependent child of the court:

25 The child has suffered, or there is a substantial risk that the child  
26 will suffer, serious physical harm or illness, as a result of the failure  
27 or inability of his or her parent or guardian to adequately supervise  
28 or protect the child, or the willful or negligent failure of the child's  
parent or guardian to adequately supervise or protect the child from  
the conduct of the custodian with whom the child has been left, or  
by the willful or negligent failure of the parent or guardian to  
provide the child with adequate food, clothing, shelter, or medical  
treatment, or by the inability of the parent or guardian to provide  
regular care for the child due to the parent's or guardian's mental  
illness, developmental disability, or substance abuse.

1 dismissed, but plaintiff will be given leave to amend. See Spears v. Weiner, No. 2:14-CV-0950-  
2 CMK-P, 2015 WL 1440319, at \*8-9 (E.D. Cal. Mar. 27, 2015) (dismissing plaintiff’s claims with  
3 leave to amend where plaintiff alleged that he was “denied due process by the public guardian,  
4 Child Protective Services,” but did not explain how his rights were violated or who was  
5 responsible for the violations). In his amended complaint, plaintiff must do more than simply  
6 state that his son was taken from him illegally. If plaintiff intends to challenge the proceedings in  
7 which his son was removed from plaintiff’s custody, plaintiff should explain what happened at  
8 the proceedings, how his constitutional rights were violated, and who is responsible for the  
9 violations.

10 B. Restraining Order

11 In his amended complaint, plaintiff makes a vague reference to an “illegal” “domestic  
12 violence restraining order” issued by the Plumas County Superior Court, but does not elaborate.  
13 See ECF No. 15 at 4.

14 Here, the court notes that according to the miscellaneous exhibits filed by plaintiff, the  
15 Sierra County Superior Court issued a criminal restraining order and a civil restraining order  
16 against plaintiff in April and May 2015, respectively. See ECF No. 12 at 6-7, 28. These  
17 restraining orders appear to be related the criminal charges plaintiff faces in Sierra County for  
18 making criminal threats and attempting to dissuade a witness. See id. at 20. However, in light of  
19 plaintiff’s allegation that *Plumas County* placed an “illegal” restraining order on him, it remains  
20 unclear whether plaintiff intends to challenge the restraining orders issued by Sierra County.  
21 Moreover, it is unclear how the issuance of any restraining order violated plaintiff’s constitutional  
22 rights.

23 Plaintiff’s vague and conclusory claim regarding the “illegal” restraining order must be  
24 dismissed. If plaintiff chooses to file an amended complaint, he should explain why the  
25 restraining order was “illegal,” how his constitutional rights were violated, and who is responsible  
26 for the violations.

27 C. State of California as a Defendant

28 Plaintiff is advised that his first amended complaint is also subject to dismissal because

1 the State of California is still listed as the sole defendant. As plaintiff has previously been  
2 informed, the Eleventh Amendment serves as a jurisdictional bar to suits brought by private  
3 parties against a state or state agency unless the state or the agency consents to such suit. See  
4 Quern v. Jordan, 440 U.S. 332 (1979); Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam);  
5 Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). In the instant case, the State of  
6 California has not consented to suit. Accordingly, plaintiff's potential claims against the State of  
7 California must be dismissed.

8 D. 42 U.S.C. § 14141

9 Plaintiff again purports to proceed pursuant to 42 U.S.C. § 14141. Plaintiff is reminded  
10 that § 14141 does not provide for a private cause of action. Gonzales v. City of Clovis, No. 1:12-  
11 CV-00053-AWI, 2012 WL 1292580, at \*5 (E.D. Cal. Apr. 13, 2012) (“Section 14141 only  
12 provides for a civil cause of action brought by the United States Attorney General . . . [it] does  
13 not provide a private right of action.”) (internal citations omitted). Moreover, § 14141 applies to  
14 those responsible for the incarceration of juveniles.<sup>6</sup> Because plaintiff does not allege that he is a  
15 juvenile, this section does not apply to plaintiff.

16 IV. Amendment

17 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
18 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.  
19 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how  
20 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there  
21 is some affirmative link or connection between a defendant's actions and the claimed deprivation.

22 \_\_\_\_\_  
23 <sup>6</sup> 42 U.S.C. § 14141(a) provides that:

24 It shall be unlawful for any governmental authority, or any agent  
25 thereof, or any person acting on behalf of a governmental authority,  
26 to engage in a pattern or practice of conduct by law enforcement  
27 officers or by officials or employees of any governmental agency  
28 with responsibility for the administration of juvenile justice or the  
incarceration of juveniles that deprives persons of rights, privileges,  
or immunities secured or protected by the Constitution or laws of  
the United States.

1 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);  
2 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
3 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of  
4 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

12 V. Motion for Release

13 In a one-paragraph document entitled "Motion," plaintiff asserts that on or about April 4,  
14 2015, plaintiff "was reporting a crime of significant magnitude against Plumas County in Sierra  
15 County" when Sierra County officials "turned [plaintiff] over to Plumas County and put  
16 [plaintiff's] son in Sierra County Child Protection." ECF No. 5 at 1. Plaintiff alleges that his son  
17 was kidnapped and that plaintiff is being held on false charges. Id. Plaintiff requests "to be  
18 picked up by a U.S. Marshall and reunited with his son in a place of safekeeping as soon as  
19 possible." Id.

20 Plaintiff's allegation that he is being "held on false charges" and his request to be "picked  
21 up by a U.S. Marshall" suggest that plaintiff may seek to challenge the fact of his confinement,  
22 rather than the conditions of his confinement. Plaintiff is advised that while a civil rights action  
23 under 42 U.S.C. § 1983 is the proper vehicle to challenge conditions of confinement, a habeas  
24 corpus petition is the sole federal vehicle for challenging the fact or duration of confinement.  
25 Presier v. Rodriguez, 411 U.S. 475, 498-99 (1973). Accordingly, to the extent plaintiff seeks to  
26 challenge the fact of his confinement, his federal remedy is a petition of habeas corpus pursuant  
27 to 28 U.S.C. § 2254, after he exhausts state judicial remedies. See id. at 500. Plaintiff's  
28 unsupported request for release should be denied.

1 VI. Motion for Appointment of Counsel

2 Plaintiff has requested appointment of counsel. ECF Nos. 17, 19, 20. Plaintiff alleges  
3 that he requires counsel because of his lack of access to legal materials. See ECF No. 19 at 1.  
4 Plaintiff also indicates that he has been told he is “unfit to stand trial” for a crime [he] is innocent  
5 of,” and asserts that he requires counsel because “two psychologists, one psychiatrist, [his] public  
6 defender, and the judge all have failed to pick up the phone” to confirm that he is “the heir to the  
7 royal thrown [*sic*]” in Sweden. ECF No. 20 at 1-2. Plaintiff further asserts that he needs “proper  
8 representation in dealing with photos and a scrap book that is connected to Eric Erickson the  
9 Swedish Spy,” which plaintiff would like to give to the Library of Congress. Id. at 3.

10 The United States Supreme Court has ruled that district courts lack authority to require  
11 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490  
12 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the  
13 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d  
14 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The  
15 test for exceptional circumstances requires the court to evaluate the plaintiff’s likelihood of  
16 success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the  
17 complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th  
18 Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to  
19 most prisoners, such as lack of legal education and limited law library access, do not establish  
20 exceptional circumstances that would warrant a request for voluntary assistance of counsel.

21 In the present case, the court does not find the required exceptional circumstances at this  
22 time, primarily because plaintiff has not submitted a complaint with allegations sufficient to state  
23 a cognizable claim for relief. The court remains only vaguely informed about the reasons  
24 plaintiff initiated this suit, and thus cannot ascertain the complexity of the issues involved or  
25 plaintiff’s likelihood of success on the merits of his claims. Therefore, plaintiff’s request for  
26 appointment of counsel will be denied without prejudice.<sup>7</sup>

27 \_\_\_\_\_  
28 <sup>7</sup> To the extent plaintiff claims appointment of counsel is warranted because he is unsatisfied  
(continued...)



1 VII. Affidavit

2 On January 15, 2016,<sup>8</sup> plaintiff filed a notice of change of address informing the court of  
3 his transfer to Metropolitan State Hospital. ECF No. 23. On January 17, 2016, plaintiff filed an  
4 “affidavit” stating in its entirety: “The State of California is now drugging me involuntarily. Not  
5 one person has called Ms. Napolitono [*sic*] or the Swedish Embassy. And now it seems the  
6 Federal Court is o.k. with the State of California drugging me. Why is that?” ECF No. 22 at 1.

7 It is not entirely clear whether plaintiff’s “affidavit” is for informational purposes or if  
8 plaintiff seeks injunctive relief from the court. To the extent plaintiff seeks to challenge the  
9 involuntary administration of medication at Metropolitan State Hospital, he may include these  
10 allegations in his second amended complaint. However, plaintiff is reminded that before seeking  
11 relief in federal court, he must first exhaust administrative remedies by filing a grievance  
12 regarding the unwanted medication.

13 VIII. Summary

14 Plaintiff’s first amended complaint is dismissed because plaintiff did not provide enough  
15 information about what events his lawsuit is based on. Plaintiff will be given one last chance to  
16 file an amended complaint. In the second amended complaint, plaintiff must give a short  
17 explanation of what this lawsuit is about. He must state how his rights were violated, and who  
18 did what. If plaintiff continues to list “the State of California” as the only defendant, plaintiff’s  
19 complaint will likely be dismissed.

20 Plaintiff’s motion for release is denied. If plaintiff seeks to challenge his confinement, he  
21 should file a habeas corpus petition after he exhausts state court remedies.

22 Plaintiff’s request for appointment of counsel is denied because the court does not have  
23 enough information about plaintiff’s lawsuit to determine if plaintiff qualifies for appointment of  
24 counsel.

25  
26 with the actions of counsel in his criminal case, these allegations do not support appointment of  
27 counsel in this civil lawsuit.

28 <sup>8</sup> Since plaintiff is proceeding pro se, he is afforded the benefit of the prison mailbox rule. See  
Houston v. Lack, 487 U.S. 266, 276 (1988).

1 IX. Conclusion

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

- 3 1. Plaintiff's first amended complaint (ECF No. 15) is dismissed;
- 4 2. Plaintiff's motions for appointment of counsel (ECF Nos. 17, 19, 20) are denied;
- 5 3. Plaintiff is granted thirty days from the date of service of this order to file an amended
- 6 complaint that complies with the requirements of the Civil Rights Act, the Federal
- 7 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint
- 8 must bear the docket number assigned this case and must be labeled "**Second**
- 9 **Amended Complaint**"; plaintiff must file an original and two copies of the amended
- 10 complaint;
- 11 4. Failure to file an amended complaint in accordance with this order will result in a
- 12 recommendation that this action be dismissed.

13 IT IS FURTHER RECOMMENDED that:

- 14 1. Plaintiff's motion for release (ECF No. 5) be denied.

15 These findings and recommendations are submitted to the United States District Judge

16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

17 after being served with these findings and recommendations, plaintiff may file written objections


18 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings

19 and Recommendations." Plaintiff is advised that failure to file objections within the specified

20 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153

21 (9th Cir. 1991).

22 DATED: February 29, 2016

23   
24 ALLISON CLAIRE  
25 UNITED STATES MAGISTRATE JUDGE  
26  
27  
28