

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAGI MUKATIN,

Plaintiff, 1:06-CV-01761 ALA P

VS.

R. HESSELTINE, et al.,

Defendants. ORDER

Plaintiff Sagi Mukatin is a state prisoner proceeding pro se and in forma pauperis in this civil rights actions pursuant to 42 U.S.C. § 1983. On December 6, 2006, plaintiff filed an original complaint alleging a violation of plaintiff's constitutional rights. On September 17, 2007, plaintiff filed an amended complaint.

I

The Federal Rules of Civil Procedure provide that a party may amend his or her pleading "once as a matter of course at any time before a responsive pleading is served." FED. R. CIV. P. 15(a). However, an amended or supplemental complaint supersedes the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once an amended pleading is filed, the original pleading no longer serves any function in the case. *Id.*; *see also* E.D. Local Rule 15-220. Plaintiff's original complaint is therefore dismissed. Review of plaintiff's September 17, 2007,

1 amended complaint finds that defendants are employees of a governmental entity.

## 2 II

3 Pursuant to 28 U.S.C. § 1915A(a), when the litigant is a prisoner, the court must screen  
4 complaints brought against a governmental entity or officer or employee of a governmental  
5 entity. The court must dismiss the complaint if the claims contained in it, even when read  
6 broadly, are legally frivolous, malicious, fail to state a claim upon which relief may be granted,  
7 or seek money damages from a defendant who is immune from such relief. 28 U.S.C. §  
8 915(A)(b). A claim “is frivolous [if] it lacks an arguable basis either in law or in fact.” *Neitzke*  
9 *v. Williams*, 490 U.S. 319, 325 (1989). “At this stage of the litigation, [this court] must accept  
10 [plaintiff’s] allegations as true.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). “A court  
11 may dismiss a complaint only if it is clear that no relief could be granted under any set of facts  
12 that could be proved consistent with the allegations.” *Id.*

13 “To sustain an action under section 1983, a plaintiff must show (1) that the conduct  
14 complained of was committed by a person acting under color of state law; and (2) that the  
15 conduct deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*,  
16 466 F.3d 676, 689 (9th Cr. 2006).

17 Review of plaintiff’s amended complaint finds a thirty-eight page document that is at  
18 times typed and other times handwritten. The amended complaint names over thirty defendants.  
19 The events at issue span plaintiff’s time at three different correctional institutions. Plaintiff’s  
20 amended complaint contains allegations concerning *Miranda* rights, defamation, verbal and  
21 physical abuse, conspiracy, retaliation and false charges, as well as violations of plaintiff’s due  
22 process, equal protection, First Amendment free exercise rights, Fifth Amendment property  
23 rights and right to access to the courts.

24 The court finds the allegations in plaintiff’s complaint so vague and conclusory that it is  
25 unable to determine whether the current action is frivolous or fails to state a claim for relief. The  
26 court has determined that the complaint does not contain a short and plain statement as required

1 by FED. R. CIV. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a  
2 complaint must give fair notice and state the elements of the claim plainly and succinctly. *Jones*  
3 *v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at  
4 least some degree of particularity overt acts which the defendant engaged in that support  
5 plaintiff's claim. *Id.* Because plaintiff has failed to comply with the requirements of FED. R.  
6 CIV. P. 8(a)(2), the amended complaint must be dismissed. The court will, however, grant leave  
7 to file a second amended complaint.

III

9 To proceed plaintiff must file a second amended complaint. Any amended complaint  
10 must show that the federal court has jurisdiction and that plaintiff's action is brought in the right  
11 place, that plaintiff is entitled to relief if plaintiff's allegations are true, and must contain a  
12 request for particular relief. Plaintiff must identify as a defendant only persons who personally  
13 participated in a substantial way in depriving plaintiff of a federal constitutional right. *Johnson*  
14 *v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a  
15 constitutional right if he does an act, participates in another's act or omits to perform an act he is  
16 legally required to do that causes the alleged deprivation). If plaintiff contends he was the victim  
17 of a conspiracy, he must identify the participants and allege their agreement to deprive him of a  
18 specific federal constitutional right.

19 In an amended complaint, the allegations must be set forth in numbered paragraphs. FED.  
20 R. CIV. P. 10(B). Plaintiff may join multiple claims if they are all against a single defendant.  
21 FED. R. CIV. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
22 occurrences, the claims must be set forth in separate paragraphs. FED. R. CIV. P. 10(b).

23 The federal rules contemplate brevity. *See Galbraith v. County of Santa Clara*, 307 F.3d  
24 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any  
25 heightened pleading standard in cases other than those governed by Rule 9(b).”); FED. R. CIV. P.  
26 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading).

1 Plaintiff's claims must be set forth in short and plain terms, simply, concisely and  
2 directly. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting  
3 point of a simplified pleading system, which was adopted to focus litigation on the merits of a  
4 claim."); FED. R. CIV. P. 8.

5 Plaintiff must eliminate from plaintiff's pleading all preambles, introductions, argument,  
6 speeches, explanations, stories, griping, vouching, evidence, attempts to negate possible  
7 defenses, summaries, and the like. *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996)  
8 (affirming dismissal of § 1983 complaint for violation of Rule 8 after warning); *see Crawford-El*  
9 *v. Britton*, 523 U.S. 574, 597 (1998) (reiterating that "firm application of the Federal Rules of  
10 Civil Procedure is fully warranted" in prisoner cases).

11 A district court must construe pro se pleading "liberally" to determine if it states a claim  
12 and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give a plaintiff an  
13 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). However,  
14 the "[f]actual allegations must be enough to raise a right to relief above the speculative level on  
15 the assumption that all the allegations in the compliant are true (even if doubtful in fact)." *Bell*  
16 *Atlantic Corporation v. Twombly*, \_\_ U.S. \_\_, 127 S.Ct. 1995, 1965 (2007) (citations omitted).

17 The court (and defendants) should be able to read and understand plaintiff's pleading  
18 within minutes. *McHenry*, 84 F.3d at 1177. A long, rambling pleading, including many  
19 defendants with unexplained, tenuous or implausible connection to the alleged constitutional  
20 injury or joining a series of unrelated claims against many defendants very likely will result in  
21 delaying the review required by 28 U.S.C. § 1915 and an order dismissing plaintiff's action  
22 pursuant to FED. R. CIV. P. 41 for violation of these instructions.

23 An amended complaint must be complete in itself without reference to any prior  
24 pleading. Local Rule 15-220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff  
25 files an amended complaint, the original pleading is superseded.

26 Plaintiff is admonished that by signing an amended complaint he certifies he has made

1 reasonable inquiry and has evidentiary support for his allegations and that for violation of this  
2 rule the court may impose sanctions sufficient to deter repetition by plaintiff or others. FED. R.  
3 CIV. P. 11. Prison rules require plaintiff to obey all laws, including this one, and plaintiff may  
4 be punished by prison authorities for violation of the court's rules and orders. *See* 15 CAL.  
5 ADMIN. CODE § 3005.

6 A prisoner may bring no § 1983 action until he has exhausted such administrative  
7 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. *Booth*  
8 *v. Churner*, 532 U.S. 731, 741 (2001). Plaintiff is further admonished that by signing an  
9 amended complaint he certifies his claims are warranted by existing law, including the law that  
10 he exhaust administrative remedies, and that for violation of this rule plaintiff risks dismissal of  
11 his action.

12 || ////

IV

14 || Therefore, IT IS HEREBY ORDERED that:

15 1. Plaintiff's December 6, 2006, complaint is dismissed;  
16 2. Plaintiff's September 9, 2007, first amended complaint is dismissed; and  
17 2. Plaintiff's is granted thirty-five (35) days from the date of this order to file a  
18 second amended complaint. Failure to file a second amended complaint may result in dismissal.

19 | ////

20 || Dated: February 8, 2008

/s/ Arthur Alarcón  
UNITED STATES CIRCUIT JUDGE  
Sitting by Designation