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

EDGAR LEE WARREN,

Plaintiff,

No. CIV S-08-1681 KJM P

vs.

BUTTE COUNTY JAIL,

Defendant.

ORDER

_____/

Plaintiff is a California state detainee currently being housed at Butte County Jail. He has filed an action for violation of civil rights under 42 U.S.C. § 1983 and a request to proceed in forma pauperis.

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-

1 28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
2 indisputably meritless legal theory or where the factual contentions are clearly baseless.
3 Neitzke, 490 U.S. at 327.

4 A complaint, or portion thereof, should only be dismissed for failure to state a
5 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
6 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
7 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer
8 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
9 complaint under this standard, the court must accept as true the allegations of the complaint in
10 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the
11 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,
12 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

13 The court finds that the allegations in plaintiff's complaint are so vague and
14 conclusory that it fails to state a claim upon which relief can be granted. Although the Federal
15 Rules of Civil Procedure adopt a flexible pleading policy, a complaint must give fair notice and
16 state the elements of the claim plainly and succinctly. Jones v. Community Redev. Agency, 733
17 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity
18 overt acts which defendants engaged in that support plaintiff's claim. Id. Plaintiff's complaint
19 must be dismissed. The court will, however, grant leave to file an amended complaint.

20 If plaintiff chooses to amend the complaint, plaintiff must set forth the
21 jurisdictional grounds upon which the court's jurisdiction depends. Federal Rule of Civil
22 Procedure 8(a). Further, plaintiff must demonstrate how the conduct complained of has resulted
23 in a deprivation of plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).
24 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
25 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423
26 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588

1 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official
2 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
3 268 (9th Cir. 1982).

4 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
5 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
6 amended complaint be complete in itself without reference to any prior pleading. This is
7 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
8 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
9 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
10 original complaint, each claim and the involvement of each defendant must be sufficiently
11 alleged.

12 Plaintiff has requested the appointment of counsel. The United States Supreme
13 Court has ruled that district courts lack authority to require counsel to represent indigent
14 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In
15 certain exceptional circumstances, the court may request the voluntary assistance of counsel
16 pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);
17 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court
18 does not find the required exceptional circumstances. Plaintiff's request for the appointment of
19 counsel will therefore be denied.

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

- 21 1. Plaintiff's request to proceed in forma pauperis is granted;
- 22 2. Plaintiff's complaint is dismissed;
- 23 3. Plaintiff is granted thirty days from the date of service of this order to file an
24 amended complaint that complies with the requirements of the Federal Rules of Civil Procedure,
25 and the Local Rules of Practice; the amended complaint must bear the docket number assigned
26 this case and must be labeled "Amended Complaint"; plaintiff must file an original and two

1 copies of the amended complaint; failure to file an amended complaint in accordance with this
2 order will result in a recommendation that this action be dismissed; and

3 4. Plaintiff's motion for the appointment of counsel (#12) is denied.

4 DATED: April 14, 2009.


U.S. MAGISTRATE JUDGE

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