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

JAMES HENRY THOMAS, JR.,

Plaintiff,

No. CIV S-08-3159 GGH P

vs.

SACRAMENTO POLICE
DEPARTMENT OFFICER SMITH, et al.,

Defendants.

ORDER

_____/

Plaintiff is a prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

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.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding

1 month's income credited to plaintiff's trust account. These payments shall be collected and
2 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's
3 account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

4 The court is required to screen complaints brought by prisoners seeking relief
5 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
6 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
7 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
8 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
9 U.S.C. § 1915A(b)(1),(2).

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
12 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
16 Cir. 1989); Franklin, 745 F.2d at 1227.

17 A complaint must contain more than a "formulaic recitation of the elements of a
18 cause of action;" it must contain factual allegations sufficient to "raise a right to relief above the
19 speculative level." Bell Atlantic Corp. v. Twombly, ___ U.S. ___, 127 S. Ct. 1955, 1965 (2007).
20 "The pleading must contain something more...than...a statement of facts that merely creates a
21 suspicion [of] a legally cognizable right of action." Id., quoting 5 C. Wright & A. Miller, Federal
22 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). In reviewing a complaint under this
23 standard, the court must accept as true the allegations of the complaint in question, Hospital
24 Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
25 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v.
26 McKeithen, 395 U.S. 411, 421 (1969).

1 Named as defendants are Sacramento Police Officers Smith and Butler. Plaintiff
2 alleges that on July 3, 2008, defendants came to his house with a warrant for someone else that
3 lived in his house. Plaintiff alleges that defendants arrested him after finding drugs in his house.
4 Plaintiff alleges that he is now on depression medication because of what defendants did.

5 It appears that plaintiff may be challenging the validity of his arrest. In Heck v.
6 Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994), an Indiana state prisoner brought a civil rights
7 action under § 1983 for damages. Claiming that state and county officials violated his
8 constitutional rights, he sought damages for improprieties in the investigation leading to his
9 arrest, for the destruction of evidence, and for conduct during his trial (“illegal and unlawful
10 voice identification procedure”). Convicted on voluntary manslaughter charges, and serving a
11 fifteen year term, plaintiff did not seek injunctive relief or release from custody. The United
12 States Supreme Court affirmed the Court of Appeal’s dismissal of the complaint and held that:

13 in order to recover damages for allegedly unconstitutional
14 conviction or imprisonment, or for other harm caused by actions
15 whose unlawfulness would render a conviction or sentence invalid,
16 a § 1983 plaintiff must prove that the conviction or sentence has
17 been reversed on direct appeal, expunged by executive order,
18 declared invalid by a state tribunal authorized to make such
19 determination, or called into question by a federal court’s issuance
20 of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages
21 bearing that relationship to a conviction or sentence that has not
22 been so invalidated is not cognizable under 1983.

19 Heck, 512 U.S. at 486, 114 S. Ct. at 2372. The Court expressly held that a cause of action for
20 damages under § 1983 concerning a criminal conviction or sentence cannot exist unless the
21 conviction or sentence has been invalidated, expunged or reversed. Id.

22 If plaintiff suffered a criminal conviction based on his arrest by defendants, then
23 his claim challenging the validity of the arrest is barred unless the conviction has been
24 invalidated, expunged or reversed. Accordingly, this claim is dismissed so that plaintiff may
25 clarify this matter.

26 ////

1 In addition, if criminal proceedings based on the arrest are ongoing, then the
2 claims are most likely barred by the Younger abstention doctrine. Principles of comity and
3 federalism weigh against a federal court interfering with ongoing state criminal proceedings by
4 granting injunctive or declaratory relief absent extraordinary circumstances. Younger v. Harris,
5 401 U.S. 37, 43-54 (1971). Accordingly, if criminal proceedings based on the arrest are ongoing,
6 in the amended complaint plaintiff must demonstrate why his claims challenging the validity of
7 the arrest are not barred by Younger.

8 Finally, plaintiff alleges that defendants used excessive force against him when
9 they put him in the back of the police car. This allegation states a colorable claim for relief.

10 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
11 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
12 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
13 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
14 there is some affirmative link or connection between a defendant's actions and the claimed
15 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
16 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
17 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board
18 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

