

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

ULYSSES DAVIS, JR.,

Plaintiff,

No. 2:09-cv-0832 FCD KJN P

vs.

CHAPLAIN JUMAH, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On August 26, 2009, the court dismissed plaintiff's complaint with leave to amend. On September 2, 2009, plaintiff filed an amended complaint.

The court has reviewed plaintiff's amended complaint and, for the limited purposes of § 1915A screening, finds that it states a cognizable claim against defendant Chaplain Jumah. See 28 U.S.C. § 1915A. Plaintiff has a reasonable opportunity to prevail on the merits of this First Amendment claim based on his contention that his request to participate in Friday night prayer services was denied.

////

////

////

1 Plaintiff, however, has failed to include any charging allegations as to defendants
2 Walker and Beoke.¹ Accordingly, the court finds that the complaint does not state a cognizable
3 claim against defendants Walker and Beoke. The claims against those defendants are hereby
4 dismissed with leave to amend.

5 Plaintiff may proceed forthwith to serve defendant Jumah and pursue his claims
6 against only that defendant, or he may delay serving any defendant and attempt again to state a
7 cognizable claim against defendants Walker and Beoke.

8 If plaintiff elects to attempt to amend his complaint to state a cognizable claim
9 against defendants Walker and Beoke, he has thirty days in which to file such an amended
10 complaint. He is not obligated to amend his complaint.

11 If plaintiff elects to proceed forthwith against defendant Jumah, against whom he
12 has stated a cognizable claim for relief, then within thirty days he must return materials for
13 service of process enclosed herewith. In that event, the court will construe plaintiff's election as
14 consent to dismissal of all claims against defendants Walker and Beoke without prejudice.

15 Any amended complaint must show: the federal court has jurisdiction; the action
16 is brought in the right place; and plaintiff is entitled to relief if plaintiff's allegations are true. It
17 must also contain a request for particular relief. Plaintiff must identify as a defendant only
18 persons who personally participated in a substantial way in depriving plaintiff of a federal
19 constitutional right. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects
20 another to the deprivation of a constitutional right if he does an act, participates in another's act
21 or omits to perform an act he is legally required to do that causes the alleged deprivation). If
22

23 ¹ Plaintiff is cautioned that supervisory personnel are generally not liable under § 1983
24 for the actions of their employees under a theory of respondeat superior and, therefore, when a
25 named defendant holds a supervisory position, the causal link between him and the claimed
26 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
(9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
Cir. 1982).

1 plaintiff contends he was the victim of a conspiracy, he must identify the participants and allege
2 their agreement to deprive him of a specific federal constitutional right.

3 In an amended complaint, the allegations must be set forth in numbered
4 paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a
5 single defendant. Fed. R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate
6 transactions or occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P.
7 10(b).

8 A district court must construe a pro se pleading “liberally” to determine if it states
9 a claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff
10 an opportunity to cure them. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000).

11 While detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a
12 cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129
13 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

14 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that
15 is plausible on its face.’” Id. (quoting Twombly, 550 U.S. at 570).

16 A claim has facial plausibility when the plaintiff pleads factual
17 content that allows the court to draw the reasonable inference that
18 the defendant is liable for the misconduct alleged. The plausibility
19 standard is not akin to a “probability requirement,” but it asks for
20 more than a sheer possibility that a defendant has acted unlawfully.
Where a complaint pleads facts that are merely consistent with a
defendant’s liability, it stops short of the line between possibility
and plausibility of entitlement to relief.

21 Id. (citations and quotation marks omitted). Although legal conclusions can provide the
22 framework of a complaint, they must be supported by factual allegations, and are not entitled to
23 the assumption of truth. Id. at 1950.

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

1 By signing a second amended complaint, plaintiff certifies he has made reasonable
2 inquiry and has evidentiary support for his allegations. If plaintiff violates this rule, the court
3 may impose sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. Claims against defendants Walker and Beoke are dismissed with leave to
6 amend. Within thirty days of service of this order, plaintiff may amend his complaint to attempt
7 to state cognizable claims against these defendants. Plaintiff is not obliged to amend his
8 complaint. In the event that plaintiff chooses not to amend his complaint, the court will construe
9 plaintiff's election to proceed forthwith as consent to an order dismissing his defective claims
10 against defendants Walker and Beoke without prejudice.

11 2. The allegations in the pleading are sufficient at least to state a cognizable claim
12 against defendant Jumah. See 28 U.S.C. § 1915A. With this order, the Clerk of the Court shall
13 provide to plaintiff a blank summons, a copy of the pleading filed September 2, 2009, one
14 USM-285 form and instructions for service of process on defendant Jumah. Within thirty days of
15 service of this order, plaintiff may return the attached Notice of Submission of Documents with
16 the completed summons, the completed USM-285 forms, and two copies of the endorsed
17 September 2, 2009 complaint. The court will transmit them to the United States Marshal for
18 service of process pursuant to Fed. R. Civ. P. 4. Defendant Jumah will be required to respond to
19 plaintiff's allegations within the deadlines stated in Fed. R. Civ. P. 12(a)(1).

20 3. Failure to comply with this order will result in a recommendation that this
21 action be dismissed.

22 DATED: February 16, 2010

23
24 /s/ Kendall J. Newman
KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE
26

davi0832.14o

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

ULYSSES DAVIS, Jr.

Plaintiff,

No. 2:09-cv-0832 FCD KJN P

vs.

CHAPLAIN JUMAH, et al.,

Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

_____ /

Plaintiff hereby submits the following documents in compliance with the court's order
filed _____:

- 1 completed summons form
- completed forms USM-285
- copies of the
Amended Complaint

Plaintiff consents to the dismissal of defendants Walker and Beoke without prejudice.

OR

 Plaintiff opts to file a second amended complaint and delay service of process.

Dated:

Plaintiff