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

EDWARD THOMAS,

Plaintiff,

No. CIV S-09-2486 KJM P

vs.

THOMAS FELKER, et al.,

Defendants

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. 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 month's income credited to plaintiff's prison trust account. These payments shall be

1 collected and forwarded by the appropriate agency to the Clerk of the Court each time the
2 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
3 § 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
8 be 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
11 fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-
12 28 (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.
14 Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however
15 inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d
16 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

17 In order to avoid dismissal for failure to state a claim a complaint must contain
18 more than "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements
19 of a cause of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other
20 words, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
21 statements do not suffice." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a
22 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.
23 "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
24 draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129
25 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be
26 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200

1 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
2 Rhodes, 416 U.S. 232, 236 (1974).

3 These are not the exclusive screening tools. In McHenry v. Renne, 84 F.3d 1172,
4 1177 (9th Cir. 1996), the Ninth Circuit Court of Appeal upheld the dismissal of a complaint it
5 found to be “argumentative, prolix, replete with redundancy, and largely irrelevant. It consists
6 largely of immaterial background information.” The court observed the Federal Rules require
7 that a complaint consist of “simple, concise, and direct” averments. Id. As a model of concise
8 pleading, the court quoted the standard form negligence complaint from the Appendix to the
9 Federal Rules of Civil Procedure:

10 1. Allegation of jurisdiction.

11 2. On June 1, 1936, in a public highway, called Boylston Street,
12 in Boston Massachusetts, defendant negligently drove a motor
vehicle against plaintiff, who was then crossing said highway.

13 3. As a result plaintiff was thrown down and had his leg broken,
14 and was otherwise injured, was prevented from transacting his
15 business, suffered great pain of body and mind, and incurred
expenses for medical attention and hospitalization in the sum of
one thousand dollars.

16 Wherefore plaintiff demands judgment against defendant in the
17 sum of one thousand dollars.

18 Id.

19 Phrased another way, “Vigorous writing is concise.” William Strunk, Jr. & E.B.
20 White, The Elements of Style, § III, ¶ 13 <<http://www.bartleby.com/141>>.

21 Plaintiff’s complaint suffers from many of the same problems as the pleading
22 dismissed in McHenry: there is much ““narrative rambling[]”” yet a marked lack of “notice of
23 what legal claims are asserted against which defendants.” McHenry, 84 F.3d at 1176. As in
24 McHenry, “[p]rolix, confusing complaints such as the ones plaintiffs filed in this case impose
25 unfair burdens on litigants and judges.” Id. at 1179. The complaint is fifty-one pages long and
26 apparently would have been longer, but does not include the exhibits plaintiff claims to have

1 attached. It contains much that is not relevant to the claims: for example, plaintiff complains that
2 he was put in segregation after correctional officers read one of his letters and construed it to be
3 a threat. Plaintiff discusses First Amendment rights at length and quotes portions of
4 administrative regulations concerning inmate mail. In addition, in describing alleged assaults
5 against him, plaintiff describes the inmates who witnessed the events and then appears to assert
6 those prisoners' right to be free from intimidation by correctional officials.

7 The court has determined that the complaint does not contain a short and plain
8 statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible
9 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and
10 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
11 must allege with at least some degree of particularity overt acts which defendants engaged in that
12 support plaintiff's claim. Id. Because plaintiff has failed to comply with the requirements of
13 Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to
14 file an amended complaint **limited to twenty pages**.

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
16 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
17 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
18 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
19 there is some affirmative link or connection between a defendant's actions and the claimed
20 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
21 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
22 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
23 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

24 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
25 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
26 amended complaint be complete in itself without reference to any prior pleading. This is

1 because, as a general rule, an amended complaint supersedes the original complaint. See Loux
2 v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
3 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
4 original complaint, each claim and the involvement of each defendant must be sufficiently
5 alleged.

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

- 7 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 8 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

9 The fee shall be collected and paid in accordance with this court's order to the Director of the
10 California Department of Corrections and Rehabilitation filed concurrently herewith.

- 11 3. Plaintiff's complaint is dismissed.

12 4. Plaintiff is granted thirty days from the date of service of this order to file an
13 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
14 Rules of Civil Procedure, the Local Rules of Practice, and this order; the amended complaint
15 must bear the docket number assigned this case, must be labeled "Amended Complaint," and
16 **must be limited to twenty pages**; failure to file an amended complaint in accordance with this
17 order will result in a recommendation that this action be dismissed.

18 DATED: April 27, 2010.

19 
20 U.S. MAGISTRATE JUDGE

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