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

MICHAEL ROBERT HISCOX,

Plaintiff,

No. CIV-S-10-0467 JAM KJM P

vs.

MIKE MARTEL, 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 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 The allegations in plaintiff's complaint are vague and conclusory. Some of the
4 claims are frivolous and some provide no basis for relief. Accordingly, plaintiff's complaint will
5 be dismissed. The court will, however, grant plaintiff leave to file an amended complaint,
6 subject to the following guidelines.

7 Although the Federal Rules adopt a flexible pleading policy, a complaint must
8 give fair notice and state the elements of the claim plainly and succinctly. Jones v. Community
9 Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff's complaint is too long and presents
10 too many facts not relevant to the violation of any constitutional rights. Plaintiff shall not repeat
11 this in his amended complaint.

12 In his amended complaint, plaintiff must allege with at least some degree of
13 particularity overt acts which defendants engaged in that support plaintiff's claim. Id. If there is
14 no identifiable defendant, there is no actionable claim. There can be no liability under 42 U.S.C.
15 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
16 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167
17 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and
18 conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v.
19 Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

20 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
21 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
22 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Plaintiff must take care to limit his facts in his
23 amended complaint to those which demonstrate a violation of his Constitutional rights. Plaintiff
24 must not simply chronicle all acts of perceived mistreatment, as he does in his original
25 complaint, in hopes that the court might glean some sort of cognizable claim.

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1 With respect to the facts alleged in his complaint, plaintiff is advised of the
2 following legal standards and principles. Plaintiff should tailor the allegations in his amended
3 complaint to the standards identified and consult the cases cited for further clarification as to the
4 particular claims.

5 The law with respect to an inmate's right of access to courts was discussed in
6 detail by the United States Supreme Court in Lewis v. Casey, 518 U.S. 343 (1996). Most
7 importantly in Lewis, the court held that for a prisoner to be successful on a denial of access to
8 courts claim, he must show not only denial of access, but also injury resulting from the denial of
9 access; "the inmate . . . must . . . demonstrate that the alleged shortcomings in the [prison's law]
10 library or legal assistance program hindered his efforts to pursue a legal claim." Id. at 351. "He
11 might show, for example, that a complaint he prepared was dismissed for failure to satisfy some
12 technical requirement which, because of deficiencies in the prison's legal assistance facilities, he
13 could not have known. Or that he had suffered arguably actionable harm that he wished to bring
14 before the courts, but was so stymied by inadequacies of the law library that he was unable even
15 to file a complaint." Id.

16 Regarding retaliation, prison officials generally cannot retaliate against inmates
17 for exercising First Amendment rights. Rizzo v. Dawson, 778 F.2d 527, 531 (9th Cir. 1985).
18 Because a prisoner's First Amendment rights are necessarily curtailed, however, a successful
19 retaliation claim requires a finding that "the prison authorities' retaliatory action did not advance
20 legitimate goals of the correctional institution or was not tailored narrowly enough to achieve
21 such goals." Id. at 532. The plaintiff bears the burden of pleading and proving the absence of
22 legitimate correctional goals for the conduct of which he complains. Pratt v. Rowland, 65 F.3d
23 802, 806 (9th Cir. 1995).

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1 Regarding prison housing assignments, in Meachum v. Fano, 427 U.S. 215
2 (1976), the United States Supreme Court explicitly held that prisoners do not have a
3 constitutional right to be housed at a particular prison within a state’s prison system. Put another
4 way, plaintiff has no freestanding claim for failure to be transferred to a particular prison.

5 The Eighth Amendment’s prohibition on cruel and unusual punishment imposes
6 on prison officials, among other things, a duty to “take reasonable measures to guarantee the
7 safety of the inmates.” Farmer v. Brennan, 511 U.S. 825, 832 (1991) (quoting Hudson v.
8 Palmer, 468 U.S. 517, 526-27 (1984)). An inmate’s Eighth Amendment rights are violated by a
9 prison official if that official exposes an inmate to a “substantial risk of serious harm,” while
10 displaying “deliberate indifference” to that risk. Id. at 834.

11 The Eighth Amendment’s prohibition of cruel and unusual punishment extends to
12 medical care of prison inmates. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). In order to state
13 a section 1983 claim for violation of the Eighth Amendment based on inadequate medical care, a
14 prison inmate must allege “acts or omissions sufficiently harmful to evidence deliberate
15 indifference to serious medical needs.” Id. at 106.

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

23 The court notes that plaintiff has filed a motion for a temporary restraining order,
24 and more recently a new declaration in support of the motion. Because the court does not yet
25 have jurisdiction over a person whom the court could order to provide plaintiff with relief, and

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1 the motion does not provide support for the proposition that plaintiff is facing immediate harm
2 and would be likely to prevail on any such claim, plaintiff's motion will be denied.

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

4 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

5 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

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

8 3. Plaintiff's complaint is dismissed.

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

15 5. Plaintiff's February 2, 2010 motion for a temporary restraining order (#3) is
16 denied.

17 DATED: June 4, 2010.

18 
19 U.S. MAGISTRATE JUDGE

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21 hisc0467.14(2.24.10)