

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

ANTHONY RECARDO G. TURNER,

Plaintiff, No. 2:10-cv-0554-MCE-JFM (PC)

VS.

YOLO COUNTY SHERIFF DEPT.,
et al.,

Defendants. ORDER

Plaintiff is a state prisoner proceeding pro se.¹ Plaintiff has filed an action styled as a petition for writ of mandamus pursuant to 28 U.S.C. § 1651 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. 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). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court

¹ This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

1 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28
2 U.S.C. § 1915(b)(2).

3 Review of plaintiff's original pleading shows that plaintiff is challenging
4 conditions of his confinement at the Yolo County Jail.² Accordingly, this action is construed as a
5 civil rights action pursuant to 42 U.S.C. § 1983. Good cause appearing, plaintiff's original
6 pleading will be dismissed and plaintiff will be granted thirty days to file an amended complaint
7 on the court's form for a civil rights action pursuant to 42 U.S.C. § 1983.

8 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
9 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
10 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
11 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
12 there is some affirmative link or connection between a defendant's actions and the claimed
13 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
14 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
15 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
16 Regents, 673 F.2d 266, 268 (9th Cir. 1982).³

17 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
18 order to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
19 complaint be complete in itself without reference to any prior pleading. This is because, as a
20 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
21 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no

22 ² Since the commencement of this action, plaintiff has been transferred to the California
23 Department of Corrections and Rehabilitation.

24 ³ Plaintiff has included allegations arising from the stop and search that preceded his
25 arrest and appears to claim, inter alia, that he was stopped and arrested without probable cause.
26 This court is precluded from exercising jurisdiction over claims that would interfere with
ongoing state criminal proceedings where, as here, those proceedings provide the defendant with
an opportunity to raise federal claims. See Younger v. Harris, 401 U.S. 37 (1971).

1 longer serves any function in the case. Therefore, in an amended complaint, as in an original
2 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
7 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
8 Director of the California Department of Corrections and Rehabilitation filed concurrently
9 herewith.

10 3. Plaintiff's complaint is dismissed.
11 4. Within thirty days from the date of this order, plaintiff shall complete the
12 attached Notice of Amendment and submit the following documents to the court:
13 a. The completed Notice of Amendment; and
14 b. An original and one copy of the Amended Complaint.

15 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
16 Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must
17 be prepared on the form provided with this order and must bear the docket number assigned this
18 case and must be labeled "Amended Complaint"; failure to file an amended complaint in
19 accordance with this order may result in the dismissal of this action.

20 5. The Clerk of the Court is directed to send plaintiff the court's form complaint
21 for a civil rights action pursuant to 42 U.S.C. § 1983 and accompanying instructions.

22 DATED: May 18, 2010.

23 
24 John F. Marshall
25 UNITED STATES MAGISTRATE JUDGE
26

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ANTHONY RECARDO G. TURNER,

Plaintiff,

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VS.

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NOTICE OF AMENDMENT

Defendants.

Plaintiff hereby states that the
order filed _____ is:

Amended Complaint

DATED:

Plaintiff