

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

JOSH BRADY,

Plaintiff,

No. CIV S-10-1658 FCD DAD P

vs.

MARSH, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a county jail inmate proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s amended complaint.

**SCREENING REQUIREMENT**

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

////

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and  
9 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
10 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic  
11 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47  
12 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must  
13 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain  
14 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,  
15 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
16 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
17 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
18 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

19 The Civil Rights Act under which this action was filed provides as follows:

20 Every person who, under color of [state law] . . . subjects, or causes  
21 to be subjected, any citizen of the United States . . . to the  
22 deprivation of any rights, privileges, or immunities secured by the  
23 Constitution . . . shall be liable to the party injured in an action at  
24 law, suit in equity, or other proper proceeding for redress.

25 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
26 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
(1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the



1 general rule, the amended complaint supercedes the original complaint, which no longer serves  
2 any function in the case. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).

3           If plaintiff elects to proceed with this action by filing a second amended  
4 complaint, he must specify who allegedly violated his rights under the First Amendment and  
5 RLUIPA. He must also allege how their conduct resulted in a deprivation of his federal  
6 constitutional or statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). There can  
7 be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection  
8 between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362  
9 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740,  
10 743 (9th Cir. 1978). Vague and conclusory allegations of official participation in civil rights  
11 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

12           Finally, plaintiff is advised of the following legal standards that appear to govern  
13 his claims. Under the First Amendment, “convicted prisoners do not forfeit all constitutional  
14 protections by reason of their conviction and confinement in prison.” Bell v. Wolfish, 441 U.S.  
15 520, 545 (1979). However, a prisoner’s First Amendment rights are “necessarily limited by the  
16 fact of incarceration, and may be curtailed in order to achieve legitimate correctional goals or to  
17 maintain prison security.” McElyea v. Babbitt, 833 F.2d 196, 197 (9th Cir. 1987). In particular,  
18 a prisoner’s constitutional right to free exercise of religion must be balanced against the state’s  
19 right to limit First Amendment freedoms in order to attain valid penological objectives such as  
20 rehabilitation of prisoners, deterrence of crime, and preservation of institutional security. See  
21 O’Lone v. Shabazz, 482 U.S. 342, 348 (1987); Pell v. Procunier, 417 U.S. 817, 822-23 (1974).

22           Under RLUIPA, the government is prohibited from imposing “a substantial  
23 burden on the religious exercise of a person residing in or confined to an institution . . . even if  
24 the burden results from a rule of general applicability.” 42 U.S.C. § 2000cc-1(a). The plaintiff  
25 bears the initial burden of alleging and demonstrating that an institution’s actions have placed a  
26 substantial burden on plaintiff’s free exercise of religion.

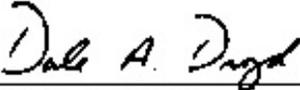
1 Plaintiff is reminded that the court cannot refer to prior pleadings in order to make  
2 his second amended complaint complete. Local Rule 220 requires that an amended complaint be  
3 complete in itself without reference to any prior pleading. Once plaintiff files a second amended  
4 complaint, his prior pleadings no longer serves any function in the case. Therefore, in a second  
5 amended complaint, as in an original complaint, each claim and the involvement of each  
6 defendant must be sufficiently alleged.

7 **CONCLUSION**

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's amended complaint (Doc. No. 12) is dismissed;
- 10 2. Plaintiff is granted thirty days from the date of service of this order to file a  
11 second amended complaint that complies with the requirements of the Civil Rights Act, the  
12 Federal Rules of Civil Procedure, and the Local Rules of Practice; the second amended complaint  
13 must bear the docket number assigned to this case and must be labeled "Second Amended  
14 Complaint"; failure to file a second amended complaint in accordance with this order will result  
15 in a recommendation that this action be dismissed without prejudice; and
- 16 3. The Clerk of the Court is directed to send plaintiff the court's form for filing a  
17 civil rights action.

18 DATED: March 28, 2011.

19  
20   
21 \_\_\_\_\_  
22 DALE A. DROZD  
23 UNITED STATES MAGISTRATE JUDGE

21 DAD:9  
22 brad1658.14am