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

HARRISON L. BURTON,

Plaintiff,

No. 2:10-cv-1980-JAM-JFM (PC)

vs.

WARDEN MCDONALD, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed August 20, 2010, plaintiff’s complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 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. 28 U.S.C. § 1915A(b)(1),(2).

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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, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355
12 U.S. 41, 47 (1957)). 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 id. However, “[s]pecific facts are not necessary; the statement [of facts] need only “‘give the
16 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’”” Erickson
17 v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007) (quoting Bell, 127 S.Ct. at 1964, in turn
18 quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this
19 standard, the court must accept as true the allegations of the complaint in question, Erickson, id.,
20 and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416
21 U.S. 232, 236 (1974).

22 Plaintiff appears to have cured the standing defects noted in the court’s August 2,
23 2010 order. However, the amended complaint suffers from other defects that preclude the court
24 from finding that the amended complaint satisfies the requirements of Fed. R. Civ. P. 8(a)(2).
25 Although the Federal Rules adopt a flexible pleading policy, a complaint must identify all named
26 defendants, see Fed. R. Civ. P. 10(a), and must give fair notice and state the elements of the

1 claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir.
2 1984).

3 Plaintiff has identified four defendants in the caption of the amended complaint,
4 but there are what appear to be allegations against other named individuals throughout that
5 pleading. Unless every defendant is clearly identified as a defendant the court is unable to
6 determine who the defendants to the action are. To that end, the Federal Rules of Civil
7 Procedure require that every party be named in the caption of the complaint, see Fed. R. Civ. P.
8 10(a), and this court's form civil rights complaint has a specific section for listing all named
9 defendants.

10 Second, the Federal Rules of Civil Procedure require that a complaint consist of
11 "simple, concise, and direct" averments. McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996).
12 Plaintiff's amended complaint suffers from many of the same problems as the pleading dismissed
13 in McHenry: there is much "narrative rambling[]" yet a marked lack of "notice of what legal
14 claims are asserted against which defendants." Id. at 1176. Plaintiff must cure this if he chooses
15 to file a second amended complaint.

16 For both of the foregoing reasons, the court has determined that the amended
17 complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2).
18 Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the
19 amended complaint must be dismissed. The court will, however, grant leave to file a second
20 amended complaint.

21 If plaintiff chooses to file a second amended complaint, plaintiff must demonstrate
22 how the conditions complained of have resulted in a deprivation of plaintiff's constitutional
23 rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the second amended complaint
24 must specifically identify each named defendant and allege in how each defendant is involved.
25 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
26 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.

1 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d
2 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation
3 in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir.
4 1982).

5 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
6 order to make plaintiff's second amended complaint complete. Local Rule 220 requires that an
7 amended complaint be complete in itself without reference to any prior pleading. This is
8 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
9 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files a second amended complaint, the
10 original pleading no longer serves any function in the case. Therefore, in a second amended
11 complaint, as in an original complaint, each claim and the involvement of each defendant must
12 be sufficiently alleged.

13 Finally, the court will require plaintiff to file any second amended complaint on
14 the court's form civil rights complaint. Plaintiff is cautioned that failure to comply with this
15 order may result in a recommendation that this action be dismissed.

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

17 1. Plaintiff's amended complaint is dismissed; and
18 2. Within thirty days from the date of this order, plaintiff shall complete the
19 attached Notice of Amendment and submit the following documents to the court:

20 a. The completed Notice of Amendment; and

21 b. An original and one copy of the Second Amended Complaint.

22 Plaintiff's second amended complaint shall be prepared on the form provided with this order and
23 shall comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure,
24 and the Local Rules of Practice; the second amended complaint must bear the docket number
25 assigned this case and must be labeled "Second Amended Complaint"; failure to file a second
26 amended complaint in accordance with this order may result in the dismissal of this action.

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3. The Clerk of the Court is directed to send plaintiff a form civil rights complaint and accompanying instructions.

DATED: January 13, 2011.


UNITED STATES MAGISTRATE JUDGE

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

HARRISON L. BURTON,

Plaintiff,

No. 2:10-cv-1980-JAM-JFM (PC)

vs.

WARDEN MCDONALD, et al.,

NOTICE OF AMENDMENT

Defendants.

_____ /

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

_____ Second Amended Complaint

DATED:

Plaintiff