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

RICHARD LOUIS GAHR

Plaintiff,

No. CIV S-10-2356 FCD GGH P

vs.

GARY SWARTHOUT, et. al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se and seeks relief pursuant to 42 U.S.C. § 1983. This action was removed from state court by defendants and the filing fee has been paid. Defendants have requested that the court screen the complaint. Doc. 3.

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).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28

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

6 A complaint must contain more than a “formulaic recitation of the elements of a
7 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
8 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
9 “The pleading must contain something more...than...a statement of facts that merely creates a
10 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal
11 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient
12 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft
13 v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127 S.Ct.
14 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows the
15 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
16 Id.

17 In reviewing a complaint under this standard, the court must accept as true the
18 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
19 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,
20 and resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.
21 1843 (1969).

22 Plaintiff alleges that prison staff retaliated against him by not allowing him to
23 make copies of the Uniform Commercial Code (UCC). Plaintiff states the copies were for
24 documents he was sending to the Contra Costa District Attorney’s Office and the Office of the
25 Attorney General. However, plaintiff has not identified any reason that defendants are retaliating
26 against him. This appears to be a case of denial of access to the courts, yet plaintiff has not

1 provided sufficient information concerning the documents he was sending and if they pertain to a
2 lawsuit. As will be discussed below, plaintiff must show an actual injury to a legal challenge to
3 his conviction, sentence or conditions of confinement. It does not appear that UCC forms would
4 be relevant to those types of suit. Plaintiff's complaint will be dismissed and plaintiff will be
5 granted leave to file an amended complaint within twenty-eight days of service of this order.

6 Retaliation by prison officials for the exercise of a prisoner's constitutional right
7 of access to the courts violates the federal constitution. Pratt v. Rowland, 65 F.3d 802, 807 (9th
8 Cir. 1995); Schroeder v. McDonald, 55 F.3d 454, 461 (9th Cir. 1995); Black v. Lane, 22 F.3d
9 1395, 1402 (7th Cir. 1994); Woods v. Smith, 60 F.3d 1161, 1164 (5th Cir. 1995); Rizzo v.
10 Dawson, 778 F.2d 527, 532 (9th Cir. 1985).

11 In order to state a retaliation claim, a plaintiff must plead facts which suggest that
12 retaliation for the exercise of protected conduct was the "substantial" or "motivating" factor
13 behind the defendant's conduct. Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir.
14 1989); Rizzo 778 F.2d at 532. The plaintiff must also plead facts which suggest an absence of
15 legitimate correctional goals for the conduct he contends was retaliatory. Pratt at 806 (citing
16 Rizzo at 532). Verbal harassment alone is insufficient to state a claim. See Oltarzewski v.
17 Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987). However, even threats of bodily injury are
18 insufficient to state a claim, because a mere naked threat is not the equivalent of doing the act
19 itself. See Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987). Mere conclusions of hypothetical
20 retaliation will not suffice, a prisoner must "allege specific facts showing retaliation because of
21 the exercise of the prisoner's constitutional rights." Frazier v. Dubois, 922 F.2d 560, 562 (n.1)
22 (10th Cir. 1990).

23 In Pratt, the Ninth Circuit concluded that in evaluating retaliation claims, courts
24 should defer "to prison officials in the evaluation of proffered legitimate penological reasons for
25 conduct alleged to be retaliatory." Pratt, 65 F.3d at 807 (citing Sandin v. Conner, 515 U.S. 472,
26 115 S. Ct. 2293 (1995)).

1 Prisoners have a constitutional right to be afforded “a reasonably adequate
2 opportunity to present claimed violations of fundamental constitutional rights to the courts.”
3 Lewis v. Casey, 518 U.S. 343, 351, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996). This right applies
4 to prisoners’ challenges to their convictions or sentences or conditions of confinement. Id. at
5 354. Prison officials may not “actively interfer[e] with inmates’ attempts to prepare legal
6 documents or file them.” Id. at 350. To establish a claim for any violation of the right of access
7 to the courts, prisoners must prove an actual injury by showing that their efforts to pursue a
8 non-frivolous claim concerning their conviction or conditions of confinement has been hindered.
9 Id. at 350-55.

10 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
11 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See
12 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
13 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
14 there is some affirmative link or connection between a defendant's actions and the claimed
15 deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d
16 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,
17 vague and conclusory allegations of official participation in civil rights violations are not
18 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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