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

KENNETH A. SMITH,

Plaintiff,

No. 2:10-cv-2537 KJN P

vs

SACRAMENTO SUPERIOR
COURT, et al.,

Defendants.

ORDER

_____/

Plaintiff is a former prisoner proceeding without counsel. 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 pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

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.

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

1 granted, or that seek monetary relief from a defendant who is immune from such relief.

2 28 U.S.C. § 1915A(b)(1),(2).

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

10 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
11 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
12 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
13 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
14 (1957)). In order to survive dismissal for failure to state a claim, a complaint must contain more
15 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
16 allegations sufficient “to raise a right to relief above the speculative level.” Id. However,
17 “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the defendant fair
18 notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v. Pardus, 551
19 U.S. 89, 93 (2007) (quoting Bell Atlantic Corp., 550 U.S. at 555) (citations and internal
20 quotations marks omitted). In reviewing a complaint under this standard, the court must accept
21 as true the allegations of the complaint in question, id., and construe the pleading in the light
22 most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

23 The court cannot discern the nature of plaintiff’s allegations. Plaintiff states the
24 following:

25 Incident 4/08/1999 30 DAY CONVICTION. For not not serving
26 H.I.V. Blood testing within 60 day time restriction by the court
order. I was returned for trouble by court and sheriff deputy, state .

1 . . of prison term who . . . falsified parole violation, felony two
2 charges by sheriff deputys three . . . magistrate judge during the
3 return to jail behind the later court order 8 month late court order
4 prior conviction misdemeanor

5 (Compl. at 3.)

6 Plaintiff names the Sacramento Superior Court and “Magistrate Judge” as
7 defendants herein. To the extent plaintiff seeks relief based on state court judges or magistrate
8 judges issuing orders or judgments, plaintiff’s claims fail. The Supreme Court has held that
9 judges acting within the course and scope of their judicial duties are absolutely immune from
10 liability for damages under § 1983. Pierson v. Ray, 386 U.S. 547 (1967). A judge is “subject to
11 liability only when he has acted in the clear absence of all jurisdiction.” Stump v. Sparkman, 435
12 U.S. 349, 356-5 (1978) (internal citation omitted). A judge's jurisdiction is quite broad. The
13 two-part test of Stump determines its scope:

14 The relevant cases demonstrates that the factors determining
15 whether an act by a judge is a ‘judicial’ one relate to the nature of
16 the act itself, i.e., whether it is a function normally performed by a
17 judge and to the expectation of the parties, i.e., whether they dealt
18 with the judge in his judicial capacity.

19 Id., 435 U.S. at 361.

20 The court finds the allegations in plaintiff’s complaint so vague and conclusory
21 that it is unable to determine whether the current action is frivolous or fails to state a claim for
22 relief. The court has determined that the complaint does not contain a short and plain statement
23 as required by Federal Rule of Civil Procedure 8(a)(2). Although the Federal Rules adopt a
24 flexible pleading policy, a complaint must give fair notice and state the elements of the claim
25 plainly and succinctly. Jones v. Cmty Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).
26 Plaintiff must allege with at least some degree of particularity overt acts which defendants
engaged in that support plaintiffs claim. Id. Because plaintiff has failed to comply with the
requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will,
however, grant leave to file an amended complaint.

1 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
2 conditions about which he complains resulted in a deprivation of plaintiff's constitutional rights.
3 Rizzo v. Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms
4 how each named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983
5 unless there is some affirmative link or connection between a defendant's actions and the
6 claimed deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy,
7 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official
8 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
9 268 (9th Cir. 1982).

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

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

- 19 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 20 2. Plaintiff's complaint is dismissed.
- 21 3. Within thirty days from the date of this order, plaintiff shall complete the
22 attached Notice of Amendment and submit the following documents to the court:
 - 23 a. The completed Notice of Amendment; and
 - 24 b. An original and one copy of the Amended Complaint.

25 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
26 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must

1 also bear the docket number assigned to this case and must be labeled "Amended Complaint."
2 Failure to file an amended complaint in accordance with this order may result in the dismissal of
3 this action.

4 DATED: September 27, 2010

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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IN THE UNITED STATES DISTRICT COURT
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Plaintiff,

No. 2:10-cv-2537 KJN P

vs

SACRAMENTO SUPERIOR
COURT, et al.,

Defendants.

NOTICE OF AMENDMENT

_____ /

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

_____ Amended Complaint

DATED:

Plaintiff