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

ANTHONY R. TURNER,

Plaintiff,

No. 2:11-cv-0451 MCE JFM (PC)

vs.

DIANE SHEPPERD, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se. 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 by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

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

1 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust
2 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court
3 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28
4 U.S.C. § 1915(b)(2).

5 The court is required to screen complaints brought by prisoners seeking relief
6 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
7 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
8 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may
9 be granted, or that seek monetary relief from a defendant who is immune from such relief. 28
10 U.S.C. § 1915A(b)(1),(2).

11 A claim is legally frivolous when it lacks an arguable basis either in law or in
12 fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-
13 28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
14 indisputably meritless legal theory or where the factual contentions are clearly baseless.
15 Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however
16 inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d
17 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
19 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell
21 Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v.
22 Gibson, 355 U.S. 41, 47 (1957)). In order to survive dismissal for failure to state a claim a
23 complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it
24 must contain factual allegations sufficient "to raise a right to relief above the speculative level."
25 Bell Atlantic, *id.* However, "[s]pecific facts are not necessary; the statement [of facts] need only
26 "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'"

1 Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007) (quoting Bell, 127 S.Ct. at 1964,
2 in turn quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this
3 standard, the court must accept as true the allegations of the complaint in question, Erickson, *id.*,
4 and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416
5 U.S. 232, 236 (1974).

6 Plaintiff, who is presently housed at California State Prison – Corcoran,
7 complains of actions taken at Deuel Vocational Institute (“DVI”) in Tracy, California. Plaintiff
8 claims defendant Diane Shepherd, a case records analyst at DVI, refused to provide plaintiff
9 copies of his central prison file unless plaintiff paid \$422.52 in copying fees. Plaintiff argues
10 this violates his First and Fourteenth Amendment rights and state and federal statutes authorizing
11 access to public records. Plaintiff also claims that as a result of Shepherd’s failure to provide
12 plaintiff access to his prison file, plaintiff has suffered a number of serious physical injuries.
13 Plaintiff names Shepherd and warden Matthew Cate as defendants. Although plaintiff’s
14 complaint states a claim as to Shepherd’s alleged refusal to provide plaintiff copies of his central
15 prison file, plaintiff’s allegation that her failure caused him to suffer physical injuries is
16 conclusory. Additionally, plaintiff fails to state any factual allegations as to Cate.

17 The court has determined that the complaint does not contain a short and plain
18 statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible
19 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and
20 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
21 must allege with at least some degree of particularity overt acts which defendants engaged in that
22 support plaintiff's claim. *Id.* Because plaintiff has failed to comply with the requirements of
23 Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to
24 file an amended complaint.

25 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
26 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See

1 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
2 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
3 there is some affirmative link or connection between a defendant's actions and the claimed
4 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
5 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
6 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
7 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

16 1. This court's June 27, 2011 findings and recommendations are vacated.

17 2. Plaintiff's July 11, 2011, September 12, 2011 and September 22, 2011 requests
18 for leave to proceed in forma pauperis are granted.

19 3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
20 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
21 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
22 Director of the California Department of Corrections and Rehabilitation filed concurrently
23 herewith.

24 4. Plaintiff's complaint is dismissed.

25 5. Within thirty days from the date of this order, plaintiff shall complete the
26 attached Notice of Amendment and submit the following documents to the court:

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- a. The completed Notice of Amendment; and
- b. An original and one copy of the Amended Complaint.

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

DATED: October 11, 2011.


UNITED STATES MAGISTRATE JUDGE

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

ANTHONY R. TURNER,

Plaintiff,

No. 2:11-cv-0451 MCE JFM (PC)

vs.

DIANE SHEPPERD, et al.,

NOTICE OF SUBMISSION

Defendants.

_____ /

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

Amended Complaint

DATED:

Plaintiff