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

LOUIS GOINS,

Plaintiff,

No. 2:11-cv-0475 LKK KJN (TEMP) PS

vs.

SACRAMENTO COUNTY, et al.,

Defendants.

ORDER

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Plaintiff is proceeding in this action without counsel. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302(c)(21).

Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact.

1 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
2 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
3 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
4 490 U.S. at 327.

5 In order to avoid dismissal for failure to state a claim a complaint must contain  
6 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements  
7 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other  
8 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
9 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a  
10 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.  
11 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
12 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129  
13 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be  
14 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200  
15 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.  
16 Rhodes, 416 U.S. 232, 236 (1974).

17 In the complaint, plaintiff alleges claims under Title VII and the Americans with  
18 Disabilities Act. The conduct giving rise to plaintiffs claims occurred in 1988-1990. Plaintiff  
19 alleges he was unable to file the instant litigation until recently. Plaintiff’s allegations regarding  
20 the tolling of the statute of limitations are insufficient. See Stoll v. Runyon, 165 F.3d 1238 (9th  
21 Cir. 1999) (equitable tolling applies when plaintiff is prevented from asserting a claim by  
22 wrongful conduct on the part of the defendant, or when extraordinary circumstances beyond the  
23 plaintiff’s control made it impossible to file timely claim). The court notes that in plaintiff’s  
24 application to proceed in forma pauperis, plaintiff stated he was employed at a golf course for a  
25 ten-week period in 2010, which suggests plaintiff has not continuously been under such a mental  
26 impairment that he was precluded from filing the instant action at an earlier time. Moreover, the

1 complaint fails to allege that plaintiff has exhausted his administrative remedies or that he has  
2 been provided a right-to-sue letter from the Equal Employment Opportunity Commission or its  
3 state counterpart. Because of these deficiencies, the court will dismiss the complaint but grant  
4 leave to amend.

5           If plaintiff chooses to amend the complaint, plaintiff must set forth the  
6 jurisdictional grounds upon which the court's jurisdiction depends. Federal Rule of Civil  
7 Procedure 8(a). Further, plaintiff must demonstrate how the conduct complained of has resulted  
8 in a deprivation of plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).  
9 Plaintiff must also set forth allegations sufficient to toll the statute of limitations and must  
10 demonstrate exhaustion of administrative remedies.

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

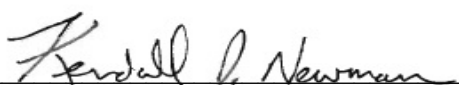
19           In accordance with the above, IT IS HEREBY ORDERED that:

- 20           1. Plaintiff's request to proceed in forma pauperis is granted;
- 21           2. Plaintiff's complaint is dismissed; and
- 22           3. Plaintiff is granted thirty days from the date of service of this order to file an  
23 amended complaint that complies with the requirements of the Federal Rules of Civil Procedure,  
24 and the Local Rules of Practice; the amended complaint must bear the docket number assigned  
25 this case and must be labeled "Amended Complaint"; plaintiff must file an original and two

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1 copies of the amended complaint; failure to file an amended complaint in accordance with this  
2 order will result in a recommendation that this action be dismissed.

3 DATED: February 25, 2011

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6 KENDALL J. NEWMAN  
7 UNITED STATES MAGISTRATE JUDGE

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