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

MIKE JAYNE,

Plaintiff,

No. 2: 11-cv-1448 GEB KJN P

vs.

DONALD VAN BUSKIRK, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a 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.

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 to make

1 monthly payments of twenty percent of the preceding month's income credited to plaintiff's 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 be
9 granted, or that seek monetary relief from a defendant who is immune from such relief.
10 28 U.S.C. § 1915A(b)(1),(2).

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
13 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
14 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
15 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
16 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
17 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
18 2000) ("a judge may dismiss [in forma pauperis] claims which are based on indisputably
19 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
20 1227.

21 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
22 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
23 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
24 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
25 (1957)). In order to survive dismissal for failure to state a claim, a complaint must contain more
26 than "a formulaic recitation of the elements of a cause of action;" it must contain factual

1 allegations sufficient “to raise a right to relief above the speculative level.” Id. However,
2 “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the defendant fair
3 notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v. Pardus, 551
4 U.S. 89, 93 (2007) (quoting Bell Atlantic Corp., 550 U.S. at 555) (citations and internal
5 quotations marks omitted). In reviewing a complaint under this standard, the court must accept
6 as true the allegations of the complaint in question, id., and construe the pleading in the light
7 most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

8 Plaintiff is incarcerated at the Shasta County Jail. In his 51 page complaint,
9 plaintiff complains about the conditions at the Shasta County jail. Federal Rule of Civil
10 Procedure 8(a) requires pleadings to contain a *short* and *plain* statement of the claims. After
11 reviewing plaintiff’s complaint, the undersigned has determined that it does not comply with
12 Federal Rule of Civil Procedure 8(a). Plaintiff could state his claims in a substantially shorter
13 complaint. Accordingly, plaintiff’s complaint is dismissed with leave to amend. If plaintiff files
14 an amended complaint, it may be no longer than 25 pages.

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
16 conditions about which he complains resulted in a deprivation of plaintiff’s constitutional rights.
17 Rizzo v. Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms
18 how each named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983
19 unless there is some affirmative link or connection between a defendant’s actions and the
20 claimed deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy,
21 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official
22 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
23 268 (9th Cir. 1982).

24 In addition, plaintiff is hereby informed that the court cannot refer to a prior
25 pleading in order to make plaintiff’s amended complaint complete. Local Rule 220 requires that
26 an amended complaint be complete in itself without reference to any prior pleading. This

1 requirement exists because, as a general rule, an amended complaint supersedes the original
2 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended
3 complaint, the original pleading no longer serves any function in the case. Therefore, in an
4 amended complaint, as in an original complaint, each claim and the involvement of each
5 defendant must be sufficiently alleged.

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

7 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

8 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

9 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
10 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
11 Shasta County Sheriff filed concurrently herewith.

12 3. Plaintiff's complaint is dismissed with leave to file an amended complaint that
13 is no longer than 25 pages.

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

16 a. The completed Notice of Amendment; and

17 b. An original and one copy of the Amended Complaint.

18 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
19 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
20 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

21 Failure to file an amended complaint in accordance with this order may result in the dismissal of
22 this action.

23 DATED: June 21, 2011

24 
25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE

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

MIKE JAYNE,

Plaintiff,

No. 2: 11-cv-1448 GEB KJN P

vs.

DONALD VAN BUSKIRK,

NOTICE OF AMENDMENT

Defendants.

_____ /

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

_____ Amended Complaint

DATED:

Plaintiff