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

MIKE ANGEL ESCALANTE,

Plaintiff,
vs.

No. CIV S-11-1508 JAM GGH P

E. UHREN, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983. Defendants removed this case from state court and previously filed a motion to dismiss. Plaintiff filed a non-opposition to the motion to dismiss but requested an opportunity to file an amended complaint, which the court granted. Plaintiff has filed an amended complaint.

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.

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. The critical inquiry is whether a constitutional claim, however inartfully
5 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
6 Cir. 1989); Franklin, 745 F.2d at 1227.

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

18 In reviewing a complaint under this standard, the court must accept as true the
19 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
20 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,
21 and resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.
22 1843 (1969).

23 Plaintiff alleges that his due process protections were violated when he was found
24 guilty of a serious rules violation report (RVR). Plaintiff states he was denied a postponement,
25 paperwork and the ability to call certain witnesses. As a result, plaintiff forfeited 30 days of good
26 time credits, ninety days loss of yard, phone privileges and confinement to quarters. Plaintiff

1 seeks money damages and the removal of the RVR from his record.

2 However, plaintiff has not demonstrated that the RVR has been invalidated,
3 expunged or reversed. As will be discussed below, plaintiff may not proceed with this action,
4 unless the RVR has been invalidated, expunged or reversed. Plaintiff's first amended complaint
5 will be dismissed and plaintiff will be granted 28 days to file a second amended complaint. No
6 further amendments will be allowed.

7 Plaintiff is informed that in Heck v. Humphrey, 512 U.S. 477 (1994), an Indiana
8 state prisoner brought a civil rights action under § 1983 for damages. Claiming that state and
9 county officials violated his constitutional rights, he sought damages for improprieties in the
10 investigation leading to his arrest, for the destruction of evidence, and for conduct during his trial
11 (“illegal and unlawful voice identification procedure”). Convicted on voluntary manslaughter
12 charges, and serving a fifteen year term, plaintiff did not seek injunctive relief or release from
13 custody. The United States Supreme Court affirmed the Court of Appeal's dismissal of the
14 complaint and held that:

15 in order to recover damages for allegedly unconstitutional
16 conviction or imprisonment, or for other harm caused by actions
17 whose unlawfulness would render a conviction or sentence invalid,
18 a § 1983 plaintiff must prove that the conviction or sentence has
19 been reversed on direct appeal, expunged by executive order,
20 declared invalid by a state tribunal authorized to make such
determination, or called into question by a federal court's issuance
of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages
bearing that relationship to a conviction or sentence that has not
been so invalidated is not cognizable under 1983.

21 Heck, 512 U.S. at 486. The Court expressly held that a cause of action for damages under § 1983
22 concerning a criminal conviction or sentence cannot exist unless the conviction or sentence has
23 been invalidated, expunged or reversed. Id.

24 The Supreme Court has extended the Heck bar to § 1983 suits that would negate
25 prison disciplinary proceedings that affect good-time credits. Edwards v. Balisok, 520 U.S. 641,
26 648 (1997). A prisoner's challenge to a disciplinary hearing procedure is barred if judgment in

1 his favor would necessarily imply the invalidity of the resulting loss of good-time credits. Id. at
2 646. So, a “prisoner’s § 1983 action is barred (absent prior invalidation) – no matter the relief
3 sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct
4 leading to conviction or internal prison proceedings) – if success in that action would necessarily
5 demonstrate the invalidity of confinement or its duration.” Wilkinson v. Dotson, 544 U.S. 74,
6 81-82 (2005).

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

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

24 Accordingly, IT IS HEREBY ORDERED that plaintiff’s first amended complaint
25 is dismissed for the reasons discussed above, with leave to file a second amended complaint
26 within twenty-eight days from the date of service of this Order. No further amendment will be

1 allowed. Failure to file a second amended complaint will result in a recommendation that this
2 action be dismissed.

3 DATED: September 9, 2011

4 /s/ Gregory G. Hollows
5 UNITED STATES MAGISTRATE JUDGE

6 GGH: AB
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