

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

LAZARUS D. ORTEGA,

Plaintiff,

No. CIV S-11-2735 GEB CKD P

vs.

UNKNOWN,

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 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 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded

1 by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account
2 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

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

9 Plaintiff's complaint fails to state a claim upon which relief can be granted
10 because, among other things, plaintiff fails to identify any defendants. The court will grant leave
11 to file an amended complaint. If plaintiff fails to identify any defendants in his amended
12 complaint, the court will recommend that this action will be dismissed.

13 Also, plaintiff is informed that if he chooses to amend his complaint, he must
14 demonstrate how the conditions complained of have resulted in a deprivation of his
15 Constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Further, the complaint
16 must allege in specific terms how each defendant is involved. There can be no liability under 42
17 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions
18 and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Vague and conclusory
19 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
20 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

21 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order
22 to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
23 complaint be complete in itself without reference to any prior pleading. This is because, as a
24 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
25 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no

26 ////

1 longer serves any function in the case. Therefore, in an amended complaint, as in an original
2 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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

- 4 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 5 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

6 All fees shall be collected and paid in accordance with this court's order to the Director of the
7 California Department of Corrections and Rehabilitation filed concurrently herewith.

- 8 3. Plaintiff's complaint is dismissed.

9 4. Plaintiff is granted thirty days from the date of service of this order to file an
10 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
11 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
12 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file
13 an original and two copies of the amended complaint; failure to file an amended complaint in
14 accordance with this order will result in a recommendation that this action be dismissed.

15 Dated: March 22, 2012

16 
17 CAROLYN K. DELANEY
18 UNITED STATES MAGISTRATE JUDGE

19 1
20 ort2735.14