

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

WILLIAM DALE SMITH, Jr.,

Plaintiff,

No. CIV S-11-2859 GEB GGH PS

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER

_____ /

Plaintiff, proceeding in this action pro se, 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(21), pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted an affidavit making the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, the request to proceed in forma pauperis will be granted.

The determination that plaintiff may proceed in forma pauperis does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

///

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 A complaint must contain more than a “formulaic recitation of the elements of a
9 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
10 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
11 “The pleading must contain something more...than...a statement of facts that merely creates a
12 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal
13 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient
14 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft
15 v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127
16 S.Ct. 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows
17 the court to draw the reasonable inference that the defendant is liable for the misconduct
18 alleged.” Id.

19 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519,
20 520-21, 92 S. Ct. 594, 595-96 (1972); Balistreri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th
21 Cir. 1988). Unless it is clear that no amendment can cure the defects of a complaint, a pro se
22 plaintiff proceeding in forma pauperis is entitled to notice and an opportunity to amend before
23 dismissal. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987); Franklin, 745 F.2d at 1230.

24 \\\

25 \\\

26 \\\

1 Before the court could screen the complaint, plaintiff filed a document entitled
2 “revised complaint” which the court construes as an amended complaint. It alleges in part:

3 Sept. 1, 2001 brings this letter to United States federal code (old
4 set) Due Process, (new set) will proceed to nearby library and
5 fulfill the latter investigation sets 2 sets [illegible] 6, 2007 to
6 present, inclusive and not revealed to any person or outside
7 possibility of secrecy of my appearance to fulfill validity of claim
8 presented this day November 28, 2011.... [Sic]

9 (Dkt. no. 4.)

10 In order to better understand the amended complaint, the undersigned also
11 reviewed the original complaint. It states only that plaintiff requests a hearing having to do with
12 espionage, and is equally vague and indecipherable.¹ (Dkt. no. 1.) The allegations in plaintiff’s
13 amended complaint are so vague and conclusory that the court is unable to determine whether the
14 current action is frivolous or fails to state a claim for relief. The complaint does not contain a
15 short and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules
16 adopt a flexible pleading policy, a complaint must give fair notice to the defendants and must
17 allege facts that support the elements of the claim plainly and succinctly. Jones v. Community
18 Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some
19 degree of particularity overt acts which defendants engaged in that support his claims. Id.
20 Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the
21 complaint must be dismissed. The court will, however, grant leave to file a second amended
22 complaint.

23 If plaintiff chooses to file a second amended complaint, plaintiff must demonstrate
24 how the conditions complained of resulted in a deprivation of plaintiff’s federal constitutional or
25 statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The second amended
26 complaint must allege in specific terms how each named defendant was involved in the

¹ Plaintiff’s other filings are also indecipherable. See dkt. nos. 5, 6.

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

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

14 Good cause appearing, IT IS ORDERED that:

- 15 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 16 2. Plaintiff's amended complaint is dismissed for the reasons discussed above,
17 with leave to file a second amended complaint within twenty-eight (28) days from the date of
18 service of this Order. Failure to file a second amended complaint will result in a
19 recommendation that this action be dismissed.

20 DATED: January 6, 2012

21 /s/ Gregory G. Hollows
22 UNITED STATES MAGISTRATE JUDGE

23 GGH:076/Smith2859.14.wpd
24
25
26