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

BERNARD L. SMITH,

Plaintiff,

No. CIV S-12-0024 GGH P

vs.

CALIFORNIA STATE PRISON -
SACRAMENTO, et al.

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se who seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff previously filed a complaint seeking relief under 42 U.S.C. § 1983, which complaint remains pending under case number 10-cv-0766 KJM DAD (the “First Action”).¹ On December 1, 2011, plaintiff filed a second amended complaint in 10-cv-0766. See Case No. 10-cv-0766, Doc. No. 59. By order entered January 5, 2012, the court directed the

¹ Defendants filed a motion to dismiss the action under Federal Rule of Civil Procedure 12(b) alleging that plaintiff failed to exhaust his administrative remedies. See Case No. 10-cv-0766, Doc. No. 20. On November 20, 2011, the magistrate judge assigned to the First Action issued Findings and Recommendations that the motion to dismiss be granted. See Case No. 10-cv-0766, Doc. No. 57. Plaintiff’s second amended complaint was subsequently filed on December 1, 2011.

1 Clerk to open a separate action and to file the second amended complaint in the new action. See
2 Case No. 10-cv-0766, Doc. No. 60. The second amended complaint is accordingly the operative
3 complaint in this new action, which has been assigned to the undersigned.

4 Plaintiff was granted leave to proceed in forma pauperis in case no. 10-cv-0766.
5 Plaintiff has not, however, filed an in forma pauperis affidavit or paid the required filing fee in
6 this new action. See 28 U.S.C. §§ 1914(a), 1915(a). Plaintiff will be provided the opportunity
7 either to submit the appropriate affidavit in support of a request to proceed in forma pauperis or
8 to submit the appropriate filing fee.

9 The court is required to screen complaints brought by prisoners seeking relief
10 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
11 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
12 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be
13 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
14 U.S.C. § 1915A(b)(1),(2).

15 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
16 Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 1831-32 (1989); Franklin v. Murphy,
17 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous
18 where it is based on an indisputably meritless legal theory or where the factual contentions are
19 clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim,
20 however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885
21 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

22 A complaint must contain more than a “formulaic recitation of the elements of a
23 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
24 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965
25 (2007). “The pleading must contain something more...than...a statement of facts that merely
26 creates a suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A.

1 Miller, Federal Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must
2 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
3 face.’” Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550
4 U.S. at 570, 127 S.Ct. at 1974). “A claim has facial plausibility when the plaintiff pleads factual
5 content that allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” Id.

7 In reviewing a complaint under this standard, the court must accept as true the
8 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
9 738, 740, 96 S.Ct. 1848, 1850 (1976), construe the pleading in the light most favorable to the
10 plaintiff, and resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411,
11 421, 89 S.Ct. 1843, 1849 (1969).

12 The complaint raises thirteen numbered counts against twenty-three separate
13 defendants. In addition, some actors identified in the plaintiff’s complaint are not named as
14 defendants in the action. Furthermore, the allegations raised in the Complaint are largely
15 conclusory and vague, and do not appear to stand on their own, as required by Local Rule 220.
16 Instead, plaintiff appears to be building on the allegations and exhibits he submitted in prior
17 complaints, which were the subject of the First Action. On September 16, 2010, the court
18 advised plaintiff of Local Rule 220's requirement that each complaint be complete in itself, see
19 Case No. 10-cv-0766, Doc. No. 9; therefore, the court will review the current operative
20 complaint without reference to previously-filed complaints or exhibits.

21 Summary of the Individual Claims

22 Eighth Amendment: Failure to Protect from Harm (Counts 1 and 4)

23 Plaintiff alleges that he is an HIV positive inmate housed at CSP-Sac who was
24 stabbed by his cellmate on an unspecified date. Plaintiff claims that defendants A. Masuret, T.
25 Woods, J. Bal and V. Muni knew of plaintiff’s medical ailments and disability but failed to
26 protect him from harm, in violation of the Eighth Amendment. Plaintiff claims that the Warden

1 has declared his HIV to be covered by the American with Disabilities Act (the “ADA”), and that
2 Dr. Nanagalama issued a “single cell chrono” on April 24, 2009, but that defendants placed
3 plaintiff with a violent cellmate anyway, resulting in the attack on plaintiff. Plaintiff claims that
4 defendant Officer Harvey forced him to accept a cellmate.

5 Plaintiff additionally alleges that Sgt. Baker, who is not named as a defendant,
6 also knew of plaintiff’s ailments and disability but failed to protect plaintiff from harm. Plaintiff
7 alleges that Sgt. Baker authorized the assailant cellmate to be placed with plaintiff even though
8 Sgt. Baker knew the cellmate’s violent history.

9 Plaintiff further alleges that Mr. Schroeder, Mr. Macober, and Mr. Hontz, who are
10 also not named as defendants, used deceptive practices to get plaintiff to sign off on placement
11 with an enemy.

12 Sgt. Baker, Mr. Schroeder, Mr. Macober, and Mr. Hontz are included in the
13 narrative portions of plaintiff’s complaint, but they are not specifically named as defendants in
14 the action. See Complaint, p. 2, Section III “Defendants.” All four were previously named as a
15 defendant in the First Complaint; however, as noted above, this complaint is being reviewed as a
16 complete document in itself and cannot be supplemented by previously filed documents.

17 First Amendment: Retaliation (Count 1)

18 Plaintiff alleges that after he filed complaints against the medical staff, defendants
19 Bal, A. Deems and D. Winslow “use[d] a CODE OF SILENCE to cover it up.” See Complaint at
20 6. Plaintiff does not describe the cover-up, nor does he allege what adverse action defendants
21 Bal, A. Deems, and D. Winslow took, or how their purported cover-up chilled his exercise of his
22 First Amendment rights.

23 Eighth Amendment: Failure to Provide Adequate Medical Care (Count 2)

24 Plaintiff alleges that he is not receiving adequate medical care at CSP-Sac. He
25 claims that the “medical policy” is dangerous and inhumane because he receives half his
26 medications in the morning, and he is required to hold the medications until evening. He argues

1 that the medication policy effects his immune system, though he does not specify how. He also
2 claims that CSP-Sac medical officers are deliberately indifferent to the side effects of his
3 medication.

4 Plaintiff additionally alleges that defendant Bal refused to let plaintiff have a
5 medical marijuana card. Plaintiff argues that the state does not prohibit his having one.

6 Eighth Amendment: Conditions of Confinement (Count 2)

7 Plaintiff alleges that CSP-Sac policy refuses to allow HIV inmates necessary diets,
8 chairs, shoes, lotions, soaps, and other medical necessities. Plaintiff argues that HIV is an illness
9 under the American with Disabilities Act (“ADA”), and that the prison’s policies violate the
10 ADA. However, he does not say whether he was ever actually refused an item that he needed,
11 and if so, what the item was, when it was denied, and who refused it.

12 Equal Protection: Disparate Treatment between EOP and HIV Prisoners (Count 2)

13 Plaintiff generally alleges that the prison discriminates between HIV inmates and
14 “EOP inmates”² because “EOP inmates under mental health and the ADA have their own
15 housing and yard. HIV inmates under medical and the ADA do not have their own housing and
16 yard.” Plaintiff does not allege any discriminatory intent.

17 Right to Privacy in Medical Records (Count 2)

18 Plaintiff generally alleges that defendant Wendell violated his medical
19 confidentiality. Plaintiff does not explain (1) what Wendell disclosed; and (2) to whom Wendell
20 disclosed.

21 Due Process (Count 3)

22 Plaintiff alleges violation of his due process rights in connection with his
23 placement in Ad-Seg, and with the disciplinary violations that he received after he refused the

24
25 ² The Enhanced Outpatient Program, or EOP, “provides care to mentally disordered
26 inmate-patients who would benefit from the structure of a therapeutic environment that is less
restrictive than inpatient settings.” See Program Guide Overview, Mental Health Services
Delivery System, 2009 Revision, at 12-1-7 to 12-1-8, available at: www.cdcr.ca.gov/dchcs/docs.

1 assignment. Specifically, plaintiff alleges that defendant Muni violated his procedural due
2 process rights when he completed the investigation into whether plaintiff should be placed in Ad-
3 Seg prior to the deadline given by the warden, and then lied to the classification committee about
4 its completion. In a related issue, plaintiff alleges that defendant Muni's interference caused
5 plaintiff to receive disciplinary infractions, for refusal of assignment. Plaintiff notes that he was
6 given a SHU term of 9 months, lost privileges on account of the infractions, and had points
7 added to his classification. He claims that the infractions are therefore moot and should be
8 dismissed.

9 Plaintiff additionally alleges that an unnamed defendant violated his substantive
10 due process by giving him an infraction for refusal of assignment on February 12, 2010. Plaintiff
11 claims that the SHU classification investigation was not completed on February 13, 2010.

12 Plaintiff further alleges that defendant Karelas violated his "objective" due
13 process rights when he failed to come back to complete the investigation with petitioner, no
14 matter what anyone else was doing.

15 Defamation (Count 5)

16 Plaintiff alleges that unnamed defendants have defamed him by placing labeling
17 him a gang member with an "R" suffix, even though he has never been convicted of a sex crime.

18 False Accusations by Unnamed Confidential Informants (Claim 6)

19 Plaintiff alleges that he has been accused of things that did not happen, and that he
20 does not know fourteen confidential informants. He additionally alleges that defendant
21 Hernandez offered inmates gifts. Plaintiff appears to be alleging that defendant Hernandez
22 bribed other inmates, who did not know the plaintiff, into offering false information about the
23 plaintiff; however, he does not describe how this allegedly false information was used or any
24 other consequence of the information flowing to defendant.

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1 Food (Count 7)

2 Plaintiff alleges that, because he filed complaints against prison officials,
3 defendant Food Manager John Doe served plaintiff food that was not fresh and had maggots in it.
4 It is not clear from plaintiff's complaint whether he was served a single contaminated meal, or
5 whether he regularly received food with maggots.

6 Right to Invest and to Establish Businesses (Count 8)

7 Plaintiff alleges that his right to invest and to set up a business is being violated
8 because defendant Couch interfered with his mail, and because defendants Johnson and Couch
9 found plaintiff guilty of illegal business dealings. Additionally, plaintiff alleges that defendant
10 Johnson violated his due process rights, and that defendant Couch called a bank to tell them that
11 plaintiff was involved in illegal activity. Plaintiff further alleges that defendants Hicks, Virga,
12 and Couch are not allowing him to open accounts. Plaintiff argues that he can invest and buy
13 stocks and bonds, and that he now needs "some form of electronic communication with broker,
14 commercial realtor, employees and attorney." He additionally seeks off-site housing in order to
15 have direct communication with his investment strategy.

16 In this case, plaintiff has not provided any details about the mail with which
17 defendant Couch allegedly interfered, such as to whom the mail was addressed, or from whom
18 was it sent.³

19 Racial Comments (Count 9)

20 Plaintiff alleges that defendant D. Aherns subjected him to racial conduct. While
21 plaintiff does not specify his race, it appears that defendant Aherns makes racially offensive
22 comments to plaintiff about African Americans, and told plaintiff that "I got you moved."

23 \\\

25 ³ The court notes that plaintiff refers to what appears to be an administrative appeal
26 decision in support of his mail claims. However, a copy of that decision is not attached to the
complaint. See Local Rule 220.

1 Violation of Rights to Participate in Political Process (Count 10)

2 Plaintiff claims to be the “public policy chairman” for an organization called the
3 “Prime People Party, Inc.” He claims that he assists the President/CEO with all agendas, and
4 needs some form of electronic communication (an iPad, laptop, or cellphone) to perform this
5 function.

6 Plaintiff appears to argue that defendant Virga has improperly violated his First
7 Amendment rights “to voice my beliefs in the political, financial, community, social-networking,
8 and the educational agendas.” Plaintiff has not identified a federal constitutional right to be
9 provided with electronic communication to facilitate participation in the political process.

10 Destruction of Degrees (Count 11)

11 Plaintiff alleges that defendants Hamad and Gordon, along with non-defendant
12 Department of Education, destroyed his vocational certificates and college degrees by removing
13 them from his central file.

14 Half-Time Credits (Count 12)

15 Plaintiff alleges that he is entitled to half-time credits under the new, retroactive
16 California Penal Code 2933.5, and that defendants Kearns, Borges, Kostecky, and Foston
17 engaged in a conspiracy to deny plaintiff his credits.

18 California Penal Code 2933.5 identifies persons who are ineligible to earn credits
19 on terms of imprisonment under Article 2.5, “Credit on Terms of Imprisonment,” providing in
20 part, that every person who is convicted of any listed felony offense, and who had previously
21 been convicted two or more times, on charges separately brought and tried, and who had
22 previously served two or more prison terms of any listed offense, is ineligible to earn credit on
23 his or her term of imprisonment “pursuant to this article.”⁴

24
25 ⁴ California Penal Code § 2933, also codified under Article 2.5, is the statute section
26 which outlines the California worktime credit scheme. The Ninth Circuit has previously
determined that California Penal Code § 2933 “merely creates a possibility of early release; it
does not create a constitutionally protected interest....” in worktime credits, though, by operation

1 Plaintiff argues that he is in fact eligible because his current and prior convictions
2 are exempt from the listed felonies.

3 Plaintiff does not provide any details regarding the alleged conspiracy, writing
4 simply that defendants “all engaged in a code of silence in denying plaintiff to receive the ½ time
5 credits.” See Complaint at 20.

6 Analysis

7 As noted above, the complaint raises thirteen numbered counts against twenty-
8 three separate defendants. Some of the numbered counts allege more than one constitutional
9 violation, and some of the actors identified in the plaintiff’s complaint are not named as
10 defendants in the action. In asserting multiple unrelated claims against different defendants (or
11 against some of whom he has not clearly identified as defendants), plaintiff presents the kind of
12 “mishmash of a complaint” that has been roundly repudiated. George v. Smith, 507 F.3d 605,
13 607 (7th Cir. 2007) (“[u]nrelated claims against different defendants belong in different suits”).

14 Fed. R. Civ. P. 18(a) provides: “A party asserting a claim, counter-claim,
15 crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as
16 it has against an opposing party.” “Thus multiple claims against a single party are fine, but
17 Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2.”
18 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). “Unrelated claims against different
19 defendants belong in different suits[.]” Id.

20 It is true that Fed. R. Civ. P. 20(a) provides that “[p]ersons ...may be joined in one
21 action as defendants if: (A) any right is asserted against them jointly, severally, or in the
22 alternative with respect to or arising out of the same transaction, occurrence, or series of
23 transactions or occurrences; and (B) any question of law or fact common to all defendants will
24 arise in the action.” However, “[a] buckshot complaint that would be rejected if filed by a free

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26 of section 2931, prisoners do have a liberty interest in good-time credits See Toussaint v. McCarthy, 801 F.2d 1080, 1095 (9th Cir. 1986).

1 person – say, a suit complaining that A defrauded the plaintiff, B defamed him, C punched him,
2 D failed to pay a debt, and E infringed his copyright, all in different transactions – should be
3 rejected if filed by a prisoner.” Id. at 607.

4 Accordingly, the complaint is dismissed with leave to amend. If plaintiff chooses
5 to amend the complaint, plaintiff must demonstrate how the conditions complained of have
6 resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v. Cassidy, 625 F.2d 227
7 (9th Cir. 1980).⁵ Also, the complaint must allege in specific terms who the named defendants
8 are, and how each named defendant is involved. There can be no liability under 42 U.S.C.
9 § 1983 unless there is some affirmative link or connection between a defendant’s actions and the
10 claimed deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633
11 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and
12 conclusory allegations of official participation in civil rights violations are not sufficient. See
13 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Finally, to the extent plaintiff
14 wishes to sue various defendants on unrelated claims, he must raise his claims in separate
15 complaints. See Fed. R. Civ. P. 18(a), 20(a).

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

23
24 ⁵ At least two of plaintiff’s claims represent challenges to either the result of an
25 administrative disciplinary hearing or to the length of plaintiff’s confinement, which claims are
26 the province of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500, 93 S.Ct. 1827
(1973). To the extent plaintiff seeks federal relief on those claims, he must do so in a petition for
habeas corpus under 28 U.S.C. § 2254.

