

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

ROBERT JILBERT,

Plaintiff,

No. CIV S-12-0342 CKD P

vs.

PHIL SHANNON, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. He 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.

Because plaintiff was incarcerated when he filed this action and because he is seeking relief against a governmental entity or officer or employee of a governmental entity, the court is required to screen his complaint. 28 U.S.C. § 1915A(a). The court must dismiss plaintiff’s complaint or portion thereof if plaintiff 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).

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           In order to avoid dismissal for failure to state a claim a complaint must contain  
9 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements  
10 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other  
11 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
12 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a  
13 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.  
14 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
15 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129  
16 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be  
17 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200  
18 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.  
19 Rhodes, 416 U.S. 232, 236 (1974).

20           The court finds the allegations in plaintiff’s complaint so vague that it fails to  
21 state a claim upon which relief can be granted. Although the Federal Rules of Civil Procedure  
22 adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the  
23 claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir.  
24 1984). Plaintiff must allege with at least some degree of particularity overt acts which  
25 defendants engaged in that support plaintiff’s claim. Id. Plaintiff’s complaint must be dismissed.  
26 The court will, however, grant leave to file an amended complaint.

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

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

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

- 18           1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 19           2. Plaintiff's complaint is dismissed.
- 20           3. Plaintiff is granted thirty days from the date of service of this order to file an

21 amended complaint that complies with the requirements of the Civil Rights Act, the Federal  
22 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the  
23 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file

24 ////

25 ////

26 ////

1 an original and two copies of the amended complaint; failure to file an amended complaint in  
2 accordance with this order will result in a recommendation that this action be dismissed.

3 Dated: March 30, 2012

4   
5 \_\_\_\_\_  
6 CAROLYN K. DELANEY  
7 UNITED STATES MAGISTRATE JUDGE

8 <sup>1</sup>  
9 jibe0342.14

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26