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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTIAN ENTO,
Plaintiff,
v.
COUNTY OF SACRAMENTO, et al.,
Defendants.

No. 2:13-cv-2107 KJN P

ORDER

Plaintiff is a state prisoner proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and is proceeding in forma pauperis. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302. Plaintiff’s amended complaint is now before the court.

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. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an

1 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
2 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
3 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
4 Cir. 1989); Franklin, 745 F.2d at 1227.

5 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
6 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
7 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
8 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
9 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
10 this standard, the court must accept as true the allegations of the complaint in question, Hospital
11 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
12 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
13 McKeithen, 395 U.S. 411, 421 (1969).

14 The Civil Rights Act under which this action was filed provides as follows:

15 Every person who, under color of [state law] . . . subjects, or causes
16 to be subjected, any citizen of the United States . . . to the
17 deprivation of any rights, privileges, or immunities secured by the
18 Constitution . . . shall be liable to the party injured in an action at
19 law, suit in equity, or other proper proceeding for redress.

20 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
21 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
22 Monell v. Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not intend § 1983
23 liability to attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976) (no
24 affirmative link between the incidents of police misconduct and the adoption of any plan or policy
25 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another
26 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an
27 affirmative act, participates in another's affirmative acts or omits to perform an act which he is
28 legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy,
588 F.2d 740, 743 (9th Cir. 1978).

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1 Supervisory personnel are generally not liable under § 1983 for the actions of their
2 employees under a theory of respondeat superior and, therefore, when a named defendant holds a
3 supervisory position, the causal link between him and the claimed constitutional violation must
4 be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979) (no liability
5 where there is no allegation of personal participation); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th
6 Cir. 1978) (no liability where there is no evidence of personal participation), cert. denied, 442
7 U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of official
8 personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266,
9 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal participation is
10 insufficient).

11 In the defendant portion of the amended complaint, plaintiff crossed out “Sacramento
12 Co[unty]” and wrote “Cameron Ento” and “C.D.E.,” but does not explain what “C.D.E.” means.
13 Plaintiff includes a list of names as additional defendants, but does not identify who the
14 individuals are, so the court cannot determine whether each named defendant acted under color of
15 state law. Otherwise, plaintiff’s three page amended complaint is virtually identical to his
16 original complaint, again alleging that the county “tried to assassinate & murder members of [his]
17 family through govt. entities, force & secure facilities every member has been set up for jail time,
18 murder, . . . attacked, or almost murdered, and murdered.” (ECF No. 13 at 3.) As plaintiff was
19 informed in the court’s prior order, plaintiff lacks standing to pursue claims on behalf of other
20 individuals. (ECF No. 8 at 3.)

21 The court finds the allegations in plaintiff’s amended complaint so vague and conclusory
22 that it is unable to determine whether the current action is frivolous or fails to state a claim for
23 relief. The court has determined that the amended complaint does not contain a short and plain
24 statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible
25 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and
26 succinctly. Jones v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must
27 allege with at least some degree of particularity overt acts which defendants engaged in that
28 support plaintiff’s claim. Id. Because plaintiff has failed to comply with the requirements of Fed.

1 R. Civ. P. 8(a)(2), the amended complaint must be dismissed. The court will, however, grant
2 leave to file a second amended complaint.

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

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

20 Finally, plaintiff is cautioned that if he submits a second amended complaint that simply
21 re-alleges the same claim alleged in his original complaint, the court will dismiss the second
22 amended complaint for failing to state a cognizable civil rights claim.

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

- 24 1. Plaintiff's amended complaint is dismissed; and
- 25 2. Plaintiff is granted thirty days from the date of service of this order to file a second
26 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules
27 of Civil Procedure, and the Local Rules of Practice; the second amended complaint must bear the
28 docket number assigned this case and must be labeled "Second Amended Complaint"; plaintiff

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

4 Dated: February 7, 2014

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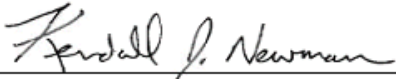
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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE