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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW JACKSON ARMSTEAD, JR.,
Plaintiff,
v.
JOHN SAPUNOR, et al.,
Defendants.

No. 2:13-cv-2152 CKD P

ORDER

Plaintiff is a recently paroled California prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983 and has consented to have all matters in this action before a United States Magistrate Judge. See 28 U.S.C. 636(c). This proceeding was initially referred to this court pursuant to Local Rule 302 and 28 U.S.C. § 636(b)(1).

Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Since plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), the request to proceed in forma pauperis will be granted.

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).

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 (9th
3 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 more than
9 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
10 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
11 “[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 claim
13 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
14 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
15 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.
16 at 1949. When considering whether a complaint states a claim upon which relief can be granted,
17 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
18 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
19 U.S. 232, 236 (1974).

20 It appears that the claims in plaintiff’s complaint arise out of criminal proceedings which
21 resulted in plaintiff being convicted of various criminal offenses. Any § 1983 claim which
22 implies the invalidity of a criminal conviction is barred by Heck v. Humphrey, 512 U.S. 477
23 (1994). Before plaintiff could proceed with such a claim, he would have to show that the
24 conviction at issue has been reversed, which plaintiff has not done. Id. at 486-87.

25 In light of the foregoing, plaintiff’s complaint will be dismissed. Plaintiff will be given
26 one opportunity to cure the deficiencies with his claims. If a claim in plaintiff’s amended
27 complaint implies the invalidity of any criminal conviction, plaintiff must show that the
28 conviction at issue has been invalidated or the claim will be dismissed. Heck, 512 U.S. at 486-87.

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

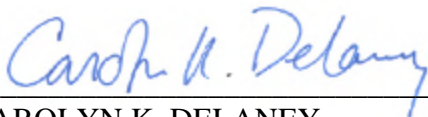
9 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
10 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
11 complaint be complete in itself without reference to any prior pleading. This is because, as a
12 general rule, an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

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

- 17 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 4) is granted.
- 18 2. Plaintiff's complaint is dismissed.
- 19 3. Plaintiff is granted thirty days from the date of service of this order to file an amended

20 complaint that complies with the requirements of this order, the Civil Rights Act, the Federal
21 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
22 docket number assigned this case and must be labeled "Amended Complaint"; failure to file an
23 amended complaint in accordance with this order will result in dismissal of this action.

24 Dated: January 2, 2014

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE