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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

QUINTON JOEY WATTS,
Plaintiff,
v.
LYDIA ROMERO, et al.,
Defendant.

No. 2:14-cv-2686 CKD P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF No. 13.) 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.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v.
7 Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir.
8 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably
9 meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at
10 327.

11 Here, plaintiff challenges a 2014 disciplinary conviction for Introduction of a Controlled
12 Substance for Purpose of Distribution, for which he was assessed 180 days of credit forfeiture.
13 (ECF No. 1 at 28.) Plaintiff claims that the conviction was obtained in violation of his federal
14 constitutional rights to equal protection and due process. (Id. at 4.)

15 It appears that this action is barred by Heck v. Humphrey, 512 U.S. 477 (1994). In Heck,
16 the Supreme Court held that to recover damages for “harm caused by actions whose unlawfulness
17 would render a conviction or sentence invalid,” a § 1983 plaintiff must prove that the conviction
18 or sentence was reversed, expunged, or otherwise invalidated. Id. at 486–487. The Heck bar
19 preserves the rule that federal challenges, which, if successful, would necessarily imply the
20 invalidity of incarceration or its duration, must be brought by way of petition for writ of habeas
21 corpus, after exhausting appropriate avenues of relief. Muhammad v. Close, 540 U.S. 749, 750–
22 751 (2004). Accordingly, “a state prisoner’s [section] 1983 action is barred (absent prior
23 invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the
24 prisoner’s suit (state conduct leading to conviction or internal prison proceedings)—if success in
25 that action would necessarily demonstrate the invalidity of confinement or its duration.”
26 Wilkinson v. Dotson, 544 U.S. 74, 81–82 (2005); see also Edwards v. Balisok, 520 U.S. 641,
27 644–646 (1997) (holding that claims alleging procedural defects and bias by a hearing officer at
28 disciplinary hearing were not cognizable under Heck, because they implied the invalidity of a

1 credit forfeiture imposed at the hearing).

2 If plaintiff prevails on his claims, a judgment in his favor will necessarily imply the
3 invalidity of his disciplinary conviction and any resulting credit loss. See Edwards, 520 U.S. at
4 644, 647. Consequently, plaintiff's §1983 action cannot proceed unless and until his disciplinary
5 conviction is invalidated as required by Heck and Edwards.¹

6 Thus the complaint will be dismissed. Plaintiff will be granted one opportunity to amend
7 the complaint in order to show that the disciplinary conviction that is the subject of this action has
8 been invalidated, or any other reason why the Heck bar does not apply.

9 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
10 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
11 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how
12 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there
13 is some affirmative link or connection between a defendant's actions and the claimed deprivation.
14 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
15 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
16 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
17 Regents, 673 F.2d 266, 268 (9th Cir. 1982). If plaintiff chooses to amend the complaint, he
18 should set forth a "short and plain statement" of his claim and any related claims against the
19 appropriate defendants.

20 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
21 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended

22 _____
23 ¹ Plaintiff is advised that prison inmates may challenge disciplinary convictions resulting in loss
24 of credits in a petition for writ of habeas corpus pursuant to 42 U.S.C. § 2254. An inmate's rights
arising under federal law concerning disciplinary proceedings which result in the loss of good
conduct sentence credit are, generally speaking, limited to the following:

- 25 1) Advance written notice of the charges;
26 2) An opportunity, when consistent with institutional safety and correctional goals, to call
witnesses and present documentary evidence in his or her defense;
27 3) A written statement by the fact-finder of the evidence relied on and the reasons for the
disciplinary action; and
28 4) That the findings of the prison disciplinary board be supported by some evidence in the
record. Superintendent v. Hill, 472 U.S. 445, 454 (1985).

1 complaint be complete in itself without reference to any prior pleading. This is because, as a
2 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
3 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
4 longer serves any function in the case. Therefore, in an amended complaint, as in an original
5 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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

7 1. The order requiring plaintiff to pay the filing fee for this action (ECF No. 9) is hereby
8 vacated;

9 2. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 13) is granted;

10 3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
11 shall be collected and paid in accordance with this court's order to the Director of the California
12 Department of Corrections and Rehabilitation filed concurrently herewith;

13 4. The complaint is dismissed without prejudice;

14 5. Plaintiff is granted thirty days from the date of service of this order to file an amended
15 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
16 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
17 assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and
18 two copies of the amended complaint; failure to file an amended complaint in accordance with
19 this order will result in a recommendation that this action be dismissed.

20 Dated: April 22, 2015

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22 CAROLYN K. DELANEY
23 UNITED STATES MAGISTRATE JUDGE
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