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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AVON DAVIES,
Plaintiff,
v.
M. DELAVEGA, et al.,
Defendants.

No. 2:14-cv-2831 CKD P

ORDER

Plaintiff is a state prisoner proceeding in forma pauperis with an action for violation of civil rights under 42 U.S.C. § 1983. He has consented to have all matters in this action before a United States Magistrate Judge. See 28 U.S.C. 636(c). On December 17, 2014, plaintiff’s complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

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 complaint, or portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in

1 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
2 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
3 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
4 this standard, the court must accept as true the allegations of the complaint in question, Hospital
5 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
6 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
7 McKeithen, 395 U.S. 411, 421 (1969).

8 The court finds the allegations in plaintiff's amended complaint so vague and conclusory
9 that it fails to state a claim upon which relief can be granted. Although the Federal Rules adopt a
10 flexible pleading policy, a complaint must give fair notice and state the elements of the claim
11 plainly and succinctly. Jones v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).
12 Plaintiff must allege with at least some degree of particularity overt acts which defendants
13 engaged in that support plaintiff's claim. Id. Plaintiff's amended complaint must be dismissed.
14 The court will, however, grant plaintiff one final opportunity to amend his complaint.

15 If plaintiff chooses to file a second amended complaint, plaintiff must demonstrate how
16 the conditions complained of have resulted in a deprivation of plaintiff's federal constitutional or
17 statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Plaintiff complains about the
18 denial of adequate medical care. Plaintiff is informed that denial or delay of medical care for a
19 prisoner's serious medical needs may constitute a violation of the prisoner's Eighth Amendment
20 rights. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). An individual is liable for such a
21 violation only when the individual is deliberately indifferent to a prisoner's serious medical
22 needs. Id.

23 If plaintiff chooses to file a second amended complaint, plaintiff must allege in specific
24 terms how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983
25 unless there is some affirmative link or connection between a defendant's actions and the claimed
26 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
27 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory

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1 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
2 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

11 Finally, the court notes that plaintiff has filed two motions for preliminary injunctive
12 relief. Because no defendants have been served with process, the court does not have jurisdiction
13 to issue any orders granting preliminary injunctive relief. Therefore, plaintiff's motions will be
14 denied without prejudice to renewal after a defendant has been served with process.

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

16 1. Plaintiff's amended complaint is dismissed.

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

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3. Plaintiff's motions for preliminary injunctive relief (ECF Nos. 22 & 23) are denied without prejudice to renewal after a defendant has been served with process.

Dated: March 17, 2015



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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davi2831.14(2)