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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JASON LATRELL THOMAS,

12 Plaintiff,

13 v.

14 JEFF MCCOMBER, et al.,

15 Defendants.
16

No. 2:14-cv-2995 KJN P

ORDER

17 Plaintiff is a state prisoner, proceeding without counsel, in an action brought under 42
18 U.S.C. § 1983. Plaintiff consented to proceed before the undersigned for all purposes. See 28
19 U.S.C. § 636(c). On January 26, 2015, the court dismissed plaintiff's complaint with leave to
20 amend. On March 2, 2015, plaintiff filed a first amended complaint.

21 The court is required to screen complaints brought by prisoners seeking relief against a
22 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
23 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
24 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
25 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

26 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
27 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
28 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when 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4 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
5 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
6 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at
7 1227.

8 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain
9 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
10 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
11 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
12 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a
13 formulaic recitation of the elements of a cause of action;” it must contain factual allegations
14 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555.
15 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the
16 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v.
17 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
18 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as
19 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
20 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
21 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

22 A. Class Action and Class Claims for Injunctive Relief

23 Plaintiff’s amended complaint must be dismissed based on plaintiff’s failure to comply
24 with the January 26, 2015 order, for the following reasons.

25 First, plaintiff has again filed this matter as a class action, allegedly on behalf of himself
26 and all inmates housed in the Psychiatric Security Housing Unit at the California State Prison,
27 Sacramento (“CSP-SAC”). Plaintiff, however, is a non-lawyer proceeding without counsel. It is
28 well established that a layperson cannot ordinarily represent the interests of a class. See McShane

1 v. United States, 366 F.2d 286 (9th Cir. 1966). This rule becomes almost absolute when, as here,
2 the putative class representative is incarcerated and proceeding pro se. Oxendine v. Williams,
3 509 F.2d 1405, 1407 (4th Cir. 1975). In direct terms, plaintiff cannot “fairly and adequately
4 protect the interests of the class,” as required by Rule 23(a)(4) of the Federal Rules of Civil
5 Procedure. See Martin v. Middendorf, 420 F. Supp. 779 (D. D.C. 1976).

6 As plaintiff was informed in this court’s January 26, 2015 order, this action will not be
7 construed as a class action. Rather, the action is an individual civil suit brought by plaintiff.
8 Because plaintiff again articulates many of his claims in terms of “the class,” the first amended
9 complaint is dismissed, and plaintiff is granted leave to file a second amended complaint in which
10 he raises only allegations personal to himself. Plaintiff is cautioned that his failure to comply
11 with this order may result in the imposition of sanctions, including the dismissal of this action.
12 Plaintiff is not a lawyer and cannot represent other inmates in a class action. Moreover, because
13 plaintiff alleges that defendants’ actions were in retaliation for the filing of grievances and civil
14 actions in court, each inmate must file his own lawsuit demonstrating that each defendant
15 retaliated against each inmate based on that inmate’s conduct protected under the First
16 Amendment. In addition, each inmate must first exhaust administrative remedies as to such
17 claims, naming each defendant within such grievances, prior to filing his own lawsuit in federal
18 court. Cal. Code Regs. tit. 15, § 3084.2(a)(3) (2011) (effective January 28, 2011, inmates are
19 required to identify the staff members involved by name, first initial, title or position, and the
20 dates of the staff member’s involvement in the issue under appeal).

21 Second, plaintiff seeks a court order stopping the Behavioral Incentive Program at CSP-
22 SAC and appointing a receiver to oversee the CSP-SAC EOP PSU programs. However, as
23 plaintiff was informed in the January 26, 2015 order, such claims for injunctive relief are barred
24 by the pending class action, Coleman v. Brown, No. 2:90-cv-0520 KJM DAD (E.D. Cal.). The
25 class in Coleman was certified in 1991 and consists of “all inmates with serious mental disorders
26 who are now or will in the future be confined within the California Department of Corrections.”
27 Id. (Nov. 14, 1991 Order, at 4-5.) The class was later amended to include “all inmates with
28 serious mental disorders who are now, or will in the future, be confined within the California

1 Department of Corrections.” Id. (July 23, 1999 Order Granting Stip. & Order Amending Plaintiff
2 Class and Application of Remedy.) The court in Coleman ultimately entered an order for
3 injunctive relief under the supervision of a special master. Coleman, 912 F.Supp. at 1323-24.
4 Here, plaintiff concedes that he suffers from a serious mental illness (ECF No. 12 at 12) which
5 makes him a member of the Coleman class.

6 “Individual suits for injunctive and equitable relief from alleged unconstitutional prison
7 conditions that are the subject of an existing class action ‘must be made through the class
8 representative until the class action is over or the consent decree is modified.’” Valdez v. Forte,
9 2010 WL 4861459, at *2 (E.D. Cal. Nov.22, 2010) (citing McNeil v. Guthrie, 945 F.2d 1163,
10 1166 (10th Cir. 1991)). Thus, plaintiff cannot maintain his claims for injunctive relief seeking to
11 suspend the Behavioral Incentive Program in this action, but must seek relief as a member of the
12 class in Coleman. Plaintiff should bring his concerns about the Behavioral Incentive Program to
13 the attention of class counsel for plaintiffs in the Coleman class action.

14 Third, Rule 41(b) of the Federal Rules of Civil Procedure provides:

15 **Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or
16 to comply with these rules or a court order, a defendant may move
17 to dismiss the action or any claim against it. Unless the dismissal
18 order states otherwise, a dismissal under this subdivision (b) and
any dismissal not under this rule--except one for lack of
jurisdiction, improper venue, or failure to join a party under Rule
19--operates as an adjudication on the merits.

19 Id. Plaintiff is admonished that his continued failure to comply with this court’s orders will result
20 in the dismissal of this action as a sanction for such failure.

21 B. Retaliation Claims

22 Plaintiff alleges that defendants retaliated against him because he filed grievances and
23 civil actions in court.

24 “Prisoners have a First Amendment right to file grievances against prison officials and to
25 be free from retaliation for doing so.” Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012)
26 (citing Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)). A viable retaliation claim in the
27 prison context has five elements: “(1) An assertion that a state actor took some adverse action
28 against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4)

1 chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably
2 advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir.
3 2005). Although the timing of an official's action can be circumstantial evidence of retaliation,
4 there must generally be something more than simply timing to support an inference of retaliatory
5 intent. See Pratt v. Rowland, 65 F.3d 802, 808 (9th Cir. 1995).

6 As plaintiff was previously informed, it appears that plaintiff may be able to state
7 cognizable retaliation claims against at least some of the defendants.¹ (ECF No. 8 at 4.)
8 However, in his second amended complaint, plaintiff must allege facts demonstrating that each
9 named defendant took an adverse action against plaintiff because of specifically identified
10 conduct protected by the First Amendment, and that such defendant's action did not advance a
11 legitimate correctional goal. Plaintiff should only include allegations personal to him; in other
12 words, plaintiff shall not include allegations concerning “the class.” Plaintiff is granted leave to
13 file a second amended complaint to raise facts alleging actions each named defendant took
14 against plaintiff, demonstrating each element required under Rhodes as to each named defendant.

15 C. Dismissal With Leave To Amend

16 The court has determined that the amended complaint does not contain a short and plain
17 statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible
18 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and
19 succinctly. Jones v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must
20 allege with at least some degree of particularity overt acts which each named defendant engaged
21 in that support plaintiff's claim. Id. Because plaintiff has failed to comply with the requirements
22 of Fed. R. Civ. P. 8(a)(2), and to comply with the January 26, 2015 order, the amended complaint
23 must be dismissed. The court will, however, grant leave to file a second amended complaint.

24 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
25 about which he complains resulted in a deprivation of plaintiff's constitutional rights. Rizzo v.
26 Goode, 423 U.S. 362, 371 (1976). Also, the second amended complaint must allege in specific

27 ¹ In paragraphs 36 and 62, plaintiff states that defendant J. Martinez “straved” plaintiff for filing
28 grievances. (ECF No. 12 at 11, 16.) It is unclear what plaintiff means by the word “straved.”

1 terms how each named defendant is involved. Id. There can be no liability under 42 U.S.C.
2 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
3 claimed deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy,
4 588 F.2d 740, 743 (9th Cir. 1978).

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

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

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

24 1. Plaintiff's amended complaint is dismissed;

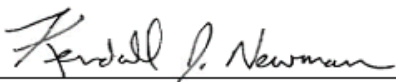
25 2. Plaintiff is granted thirty days from the date of service of this order to file a second
26 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules
27 of Civil Procedure, and the Local Rules of Practice; the second amended complaint must bear the
28 docket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

1 file a second amended complaint in accordance with this order will result in the dismissal of this
2 action.

3 3. The Clerk of the Court is directed to send plaintiff the form for filing a civil rights
4 complaint by a prisoner.

5 4. Plaintiff is cautioned that failure to comply with this order may result in the imposition
6 of sanctions, including dismissal of this action pursuant to Rule 41(b) of the Federal Rules of
7 Civil Procedure.

8 Dated: April 28, 2015

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10 
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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