

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

FRANK LEE DEARWESTER,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

No. 2:15-CV-0443-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is plaintiff’s first amended complaint (ECF No. 12).

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the

1 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it
2 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
3 with at least some degree of particularity overt acts by specific defendants which support the
4 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
5 impossible for the Court to conduct the screening required by law when the allegations are vague
6 and conclusory.

7 8 **I. PLAINTIFF'S ALLEGATIONS**

9 In this case, plaintiff names the following defendants: (1) California Department of
10 Corrections and Rehabilitation; (2) California State Prison, Deuel Vocational Institution; (3) DOE
11 Employees 01-25. See ECF No. 12.

12 In the process of plaintiff's transfer from Deuel Vocational Institution to California
13 State Prison, Los Angeles County, an unidentified Transportation Officer deprived plaintiff of his
14 property in violation of his due process rights. The Officer took plaintiff's reading glasses without
15 returning them and disposed of twenty-one paperback books, seven magazines, three jars of
16 Folgers instant coffee (8 oz. each), and one pair of Nike shower shoes. Although plaintiff signed
17 inventory forms accounting for his missing property, he was required to sign the forms to recover
18 his property before he could inspect the items. Plaintiff alleges he was coerced into signing the
19 forms under a perceived threat of retaliation or loss of his property.

20 21 **II. DISCUSSION**

22 The Eleventh Amendment prohibits federal courts from hearing suits brought
23 against a state both by its own citizens, as well as by citizens of other states. See Brooks v.
24 Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition
25 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep't
26 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th
27 Cir. 1989). A state's agency responsible for incarceration and correction of prisoners is a state
28 agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782

1 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en banc).

2 Plaintiff fails to allege the identity of the Transportation Officer or any other state
3 official responsible for the loss of his property. The named defendants are all immune from suit
4 under the Eleventh Amendment because they are agencies of the State of California. Plaintiff will
5 be provided an opportunity to amend the complaint to allege additional facts and identify
6 responsible defendants.

8 III. CONCLUSION

9 Because it is possible that the deficiencies identified in this order may be cured by
10 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire
11 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
12 informed that, as a general rule, an amended complaint supersedes the prior complaint. See
13 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
14 amend, all claims alleged in the prior complaint which are not alleged in the amended complaint
15 are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if plaintiff
16 amends the complaint, the Court cannot refer to the prior pleading in order to make plaintiff's
17 amended complaint complete. See Local Rule 220. An amended complaint must be complete in
18 itself without reference to any prior pleading. See id.

19 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
20 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
21 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
22 each named defendant is involved, and must set forth some affirmative link or connection
23 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
24 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

25 Finally, plaintiff is warned that failure to file an amended complaint within the
26 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
27 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
28 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).

1 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's first amended complaint is dismissed with leave to amend; and
4 2. Plaintiff shall file a second amended complaint within 30 days of the date
5 of service of this order.

6
7 Dated: June 18, 2020



8
9 DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28