

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

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ORION S. EHRINGER,
Plaintiff,
v.
STATE OF CALIFORNIA,
Defendant.

No. 2:15-cv-00985 AC P

ORDER

Plaintiff is a county jail inmate at Wayne Brown Correctional Facility proceeding pro se. Plaintiff 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. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Motion To Proceed IFP

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). See ECF No. 9. 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 this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 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

1 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.
2 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
3 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §
4 1915(b)(2).

5 Screening Requirement

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

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
13 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
14 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
15 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
16 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
17 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
18 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
19 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
20 1227.

21 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
22 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
23 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
24 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
25 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
26 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
27 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.
28 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the

1 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Erickson v.
2 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
3 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as
4 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
5 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
6 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

7 Allegations of the Complaint

8 Plaintiff’s complaint alleges as follows:

9 For to [*sic*] long now people have been profiting off the sorrow +
10 death of far to [*sic*] many people. As you may know, my last case
11 with your court was dismissed and even worse, it was ignored by
12 the masses + is now being swept away. My son was taken from me
13 while I was turning a judge in. They kidnapped him plain + simple.
14 Now I’m here + have not seen him since. My first time here but
15 oddly I feel at home. I can only feel the pain + dispare [*sic*] from
16 the people who surround me, and all were sent here by the state, the
17 very people who created the ones the feel so just in condiming [*sic*].
18 Your dumb asses created me as well when you let me go to Sea as a
19 child.

20 Relief; You know what I want but I personally [*sic*] think everyone
21 else involved needs to be released and provided with a home or
22 retirement for life.

23 ECF No. 1 at 2-3.

24 The court finds the allegations in plaintiff’s complaint so vague and conclusory that it is
25 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
26 court has determined that the complaint does not contain a short and plain statement as required
27 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a
28 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones
v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least
some degree of particularity overt acts which defendants engaged in that support plaintiff’s claim.
Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the
complaint must be dismissed. The court will, however, grant leave to file an amended complaint.

Plaintiff’s complaint is also subject to dismissal because the State of California is listed as
the sole defendant. The Eleventh Amendment serves as a jurisdictional bar to suits brought by

1 private parties against a state or state agency unless the state or the agency consents to such suit.
2 See Quern v. Jordan, 440 U.S. 332 (1979); Alabama v. Pugh, 438 U.S. 781 (1978) (per curiam);
3 Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). In the instant case, the State of
4 California has not consented to suit. Accordingly, plaintiff's potential claims against the State of
5 California must be dismissed.

6 The court notes that plaintiff's vague reference to his son being "taken" from him suggests
7 that the complaint may be related to a custody dispute regarding plaintiff's son. Plaintiff is
8 informed that "federal courts have uniformly held that they should not adjudicate cases involving
9 domestic relations, including the custody of minors . . ." Peterson v. Babbitt, 708 F.2d 465, 466
10 (9th Cir. 1983). "The whole subject of domestic relations and particularly child custody problems
11 is generally considered a state law matter." Id. Accordingly, a § 1983 action is not the
12 appropriate vehicle for challenging domestic relations matters or child custody issues.

13 Finally, to the extent plaintiff seeks to bring this action pursuant to 42 U.S.C. § 14141,
14 plaintiff is advised that § 14141 does not provide for a private cause of action. Gonzales v. City
15 of Clovis, No. 1:12-CV-00053-AWI, 2012 WL 1292580, at *5 (E.D. Cal. Apr. 13, 2012)
16 ("Section 14141 only provides for a civil cause of action brought by the United States Attorney
17 General . . . [it] does not provide a private right of action.") (internal citations omitted).
18 Moreover, § 14141 applies to those responsible for the incarceration of juveniles.¹ Because
19 plaintiff does not allege that he is a juvenile, this section does not apply to plaintiff.

20 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
21 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
22

23 ¹ 42 U.S.C. § 14141(a) provides that:

24 It shall be unlawful for any governmental authority, or any agent
25 thereof, or any person acting on behalf of a governmental authority,
26 to engage in a pattern or practice of conduct by law enforcement
27 officers or by officials or employees of any governmental agency
28 with responsibility for the administration of juvenile justice or the
incarceration of juveniles that deprives persons of rights, privileges,
or immunities secured or protected by the Constitution or laws of
the United States.

1 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how
2 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there
3 is some affirmative link or connection between a defendant's actions and the claimed deprivation.
4 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
5 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
6 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
7 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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


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

- 16 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 9) is granted;
- 17 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
18 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
19 1915(b)(1). All fees shall be collected and paid in accordance with this court's order
20 to the Director of the California Department of Corrections and Rehabilitation filed
21 concurrently herewith;
- 22 3. Plaintiff's complaint (ECF No. 1) is dismissed; and
- 23 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
24 complaint that complies with the requirements of the Civil Rights Act, the Federal
25 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint
26 must bear the docket number assigned this case and must be labeled "Amended
27 Complaint"; plaintiff must file an original and two copies of the amended complaint;

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

5. failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

DATED: June 18, 2015



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE