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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JARRIS J. SILAGI,

12 Plaintiff,

13 v.

14 DEPARTMENT OF STATE HOSPITAL,
15 et al.,

16 Defendants.
17

No. 2:15-cv-1118 DAD P

ORDER

18 BACKGROUND

19 Plaintiff, a state prisoner currently incarcerated at Salinas Valley State Prison, has filed a
20 civil rights action pursuant to 42 U.S.C. § 1983.

21 Plaintiff's complaint reads, in its entirety, as follows:

22 On 5/18/2015, in Salinas Valley State Prison, Dr. Terrini
23 interviewed me, Jarris J. Silagi, concerning an illegal MDO action
24 against me. The MDO action is unconstitutional. I seek for the
MDO action to be withdrawn in the interest of justice.

25 (Complaint, ECF No. 1 at 1.) In his complaint, plaintiff names as defendants the California
26 Department of State Hospitals ("DSH"), and two individuals, Dr. Rohrer and Dr. Terrini. The
27 term "MDO," as used in the complaint before the court, apparently refers to the Mentally
28 Disordered Offenders law, California Penal Code §§ 2960-2981. According to a website operated

1 by defendant DSH:

2 A prisoner who meets six specific MDO criteria . . . shall be
3 ordered by the Board of Prison Hearings (BPH) to be treated by the
4 Department of State Hospitals (DSH) as a condition of parole. An
MDO patient is a parolee who meets the criteria and is paroled on
the condition that he or she receives DSH treatment.

5 Forensics: Mentally Disordered Offenders Program (MDO), California Dep't of State Hosps.,
6 <http://www.dsh.ca.gov/forensics/MDO.asp>. The court takes judicial notice of the pertinent state
7 statutes and the content of the quoted web page pursuant to Federal Rule of Evidence 201(b).

8 Given the sparseness of the allegations of plaintiff's complaint, it is impossible to
9 determine whether his claims are properly brought in a civil rights action pursuant to 42 U.S.C.
10 § 1983 or as a petition for writ of habeas corpus brought pursuant to 28 U.S.C. §§ 2241 and 2254.
11 The court will screen plaintiff's complaint as if it were a § 1983 complaint and trust that, upon
12 amendment, the court will be able to discern the specific nature of plaintiff's claim(s).

13 Similarly, it is unclear whether venue is proper in the Eastern District of California.
14 Generally, a civil action may be brought in one of the following:

15 (1) a judicial district in which any defendant resides, if all
16 defendants are residents of the State in which the district is located;

17 (2) a judicial district in which a substantial part of the events or
omissions giving rise to the claim occurred, or a substantial part of
18 property that is the subject of the action is situated; or

19 (3) if there is no district in which an action may otherwise be
brought as provided in this section, any judicial district in which
20 any defendant is subject to the court's personal jurisdiction with
respect to such action.

21 28 U.S.C. § 1391(b). Venue for a suit against the State of California, of which DSH is an arm, is
22 proper in any federal judicial district within California. However, in habeas corpus proceedings,
23 venue is proper "in the district wherein such person is in custody or in . . . the district within
24 which the State court was held which convicted and sentenced him." 28 U.S.C. § 2241(d).
25 Salinas Valley State Prison, where plaintiff is currently incarcerated, is in the Northern District of
26 California. In 2014, the California Court of Appeal decided a direct appeal by one Jarris Jay
27 Silagi, involving a criminal conviction in the Los Angeles County Superior Court, which is
28 located in the Central District of California. People v. Silagi, No. B248087, 2014 WL 2001030

1 (Cal. Ct. App. May 16, 2014). If plaintiff is found eligible for MDO status, it may be that he is
2 eventually hospitalized in a facility within the Eastern District of California. Because it cannot be
3 determined whether this case is properly framed as a civil rights complaint or as a petition for
4 habeas relief, the court cannot address the propriety of venue at this juncture. Again, it is
5 anticipated that, upon amendment, plaintiff will provide sufficient information for the court to
6 decide the question of venue.

7 ANALYSIS

8 I. Screening Requirement

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

14 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
15 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
16 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
17 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
18 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
19 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
20 Cir. 1989); Franklin, 745 F.2d at 1227.

21 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
22 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
23 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
24 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
25 Lake Log Owners Ass’n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
26 this standard, the court must accept as true the allegations of the complaint in question, Hospital
27 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light

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1 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
2 McKeithen, 395 U.S. 411, 421 (1969).

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

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

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

1 II. Filing Fee

2 Plaintiff has not paid the required filing fee of \$350.00 plus the \$50.00 administrative fee
3 nor has he filed an application to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a) &
4 1915(a). Plaintiff will be granted thirty days to pay the filing fee in full or submit a properly
5 completed application to proceed in forma pauperis.

6 Plaintiff is cautioned that the in forma pauperis application form includes a section that
7 must be completed by a prison official, and the form must be accompanied by a certified copy of
8 plaintiff's prison trust account statement for the six-month period immediately preceding the
9 filing of this action.

10 CONCLUSION

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

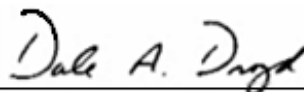
12 1. Plaintiff's complaint is dismissed.

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

19 3. Plaintiff shall submit, within thirty days from the date of this order, either the \$350.00
20 filing fee plus the \$50.00 administrative fee or a properly completed application to proceed in
21 forma pauperis on the form provided with this order; plaintiff is cautioned that failure to comply
22 with this order or seek an extension of time to do so will result in dismissal of this action without
23 prejudice; and

24 4. The Clerk of the Court is directed to send plaintiff an Application to Proceed In Forma
25 Pauperis By a Prisoner for use in a civil rights action.

26 Dated: June 2, 2015

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28 DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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