

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JARRIS J. SILAGI,

No. 2:15-cv-1118 DAD P

Plaintiff,

V.

## ORDER

DEPARTMENT OF STATE HOSPITAL,  
et al.,

## Defendants.

## BACKGROUND

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

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

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 I seek for the MDO action to be withdrawn in the interest of justice.

(Complaint, ECF No. 1 at 1.) In his complaint, plaintiff names as defendants the California Department of State Hospitals (“DSH”), and two individuals, Dr. Rohrer and Dr. Terrini. The term “MDO,” as used in the complaint before the court, apparently refers to the Mentally 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 Hosp.,  
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  
18           omissions giving rise to the claim occurred, or a substantial part of  
          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  
20           brought as provided in this section, any judicial district in which  
          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.

## II. Filing Fee

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

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

## CONCLUSION

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

1. Plaintiff's complaint is dismissed.

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

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

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

Dated: June 2, 2015

Dale A. Drozd  
DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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