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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES ANTHONY SMITH,

Plaintiff,

v.

SISKIYOU COUNTY JAIL, *et al.*,

Defendants.

Case No. 2:15-cv-02534-TLN-JDP (PC)

SCREENING ORDER THAT PLAINTIFF:

(1) FILE A THIRD AMENDED COMPLAINT; OR

(2) NOTIFY THE COURT THAT HE WISHES TO STAND BY HIS SECOND AMENDED COMPLAINT, SUBJECT TO DISMISSAL OF CLAIMS AND DEFENDANTS

ECF No. 55

ORDER DENYING DEFENDANTS' MOTION TO DISMISS AS MOOT

ECF No. 56

The court previously dismissed plaintiff's first amended complaint—which alleged claims against the Siskiyou County Jail and Deputy Sheriff Miller—and entered judgment accordingly. ECF Nos. 17, 27, 28. On appeal, the U.S. Court of Appeals for the Ninth Circuit affirmed the dismissal of plaintiff's claims against Siskiyou County Jail, reversed the dismissal of his Eighth Amendment claim against Miller, and remanded the case to this court. ECF No. 35.

1 On remand, defendant Miller filed a motion to dismiss the first amended complaint.¹ ECF
2 No. 45. In response, plaintiff filed a motion to amend the complaint. ECF No. 51. The
3 previously assigned magistrate judge granted plaintiff's motion, directed him to file a second
4 amended complaint within thirty days, and denied the motion to dismiss as moot. ECF No. 54.
5 The parties were also notified that after the second amended complaint was filed, the court would
6 screen it as required by 28 U.S.C. § 1915A. *Id.* at 2.

7 Plaintiff subsequently filed a second amended complaint, ECF No. 55, which is before the
8 court for screening. Also pending is a motion to dismiss, which is purportedly brought on behalf
9 of defendants Miller, Siskiyou County Jail, and Jeff Huston. Plaintiff's second amended
10 complaint contains no allegations and therefore cannot proceed past screening. I will give him a
11 final chance to amend his complaint before I recommend that this action be dismissed. I will
12 deny the pending motion to dismiss as moot.²

13 Screening and Pleading Requirements

14 A federal court must screen a prisoner's complaint that seeks relief against a governmental
15 entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable
16 claims and dismiss any portion of the complaint that is frivolous or malicious, that fails to state a
17 claim upon which relief may be granted, or that seeks monetary relief from a defendant who is
18 immune from suit. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

19
20 ¹ That motion was purportedly brought on behalf of defendants Miller and Siskiyou
21 County Jail, notwithstanding the Ninth Circuit's order affirming the dismissal of the claims
22 against the latter defendant. ECF No. 45.

23 ² The motion to dismiss appears to be directed at plaintiff's first amended complaint, *see*
24 ECF No. 56, but that complaint was nullified when plaintiff filed his second amended complaint.
25 *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (holding that an "amended
26 complaint supersedes the original, the latter being treated thereafter as non-existent") (overruled
27 in part on other grounds by *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)).
28 Separately, defense counsel takes the position that plaintiff has filed another action in this district
based on the factual circumstances at issue in the instant case. *See* ECF No. 56-1 at 11 (arguing
that "[f]or over five years this court has allowed this plaintiff to maintain two separate actions for
the same alleged constitutional violation"). Given this view, defense counsel may have
responsibilities under Local Rule 123. *See* E.D. Cal. L.R. 123(b) (requiring "[c]ounsel who has
reason to believe that an action on file . . . may be related to another action on file (whether or not
dismissed or otherwise terminated) shall promptly file in each action and serve on all parties in
each action a Notice of Related Cases").

1 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
2 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
3 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
4 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
5 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere
6 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not
7 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,
8 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that
9 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264
10 n.2 (9th Cir. 2006) (en banc) (citations omitted).

11 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404
12 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it
13 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
14 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).
15 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements
16 of the claim that were not initially pled.”” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,
17 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

18 Analysis

19 Plaintiff’s second amended complaint, which consists of a single paragraph, merely asks
20 the court to add Jeff Huston as defendant. ECF No. It contains neither factual allegations nor a
21 specific claim against Huston or any other defendant. Presumably, plaintiff seeks to incorporate
22 the allegations and claims in his earlier complaint. That practice, however, is not permitted. The
23 operative complaint must stand on its own, and cannot rely on statements in a prior complaint to
24 supply the necessary allegations. *Forsyth*, 114 F.3d at 1474. Consequently, plaintiff’s second
25 amended complaint fails to state a claim.

26 I will give plaintiff one more opportunity to amend his complaint before recommending
27 dismissal. If plaintiff decides to file an amended complaint, the amended complaint will
28 supersede the current complaint. *See Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir.

1 2012) (en banc). This means that the amended complaint will need to be complete on its face
2 without reference to the prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended
3 complaint is filed, the current complaint no longer serves any function. Therefore, in an amended
4 complaint, as in an original complaint, plaintiff will need to assert each claim and allege each
5 defendant's involvement in sufficient detail. The amended complaint should be titled "Third
6 Amended Complaint" and refer to the appropriate case number. If plaintiff does not file an
7 amended complaint, I will recommend that this action be dismissed.

8 Accordingly, it is ORDERED that:

- 9 1. Defendants' motion to dismiss, ECF No. 56, is denied as moot.
- 10 2. Within sixty days from the service of this order, plaintiff must either file a third
11 amended complaint or advise the court he wishes stand by his current complaint.
- 12 3. If plaintiff decides to stand by his current complaint, I will recommend that this action
13 be dismissed.
- 14 4. If plaintiff elects to file a third amended complaint, I will screen the amended
15 complaint as required by 28 U.S.C. § 1915A. Defendants shall not file a response to any
16 amended complaint until after it has been screened by the court.
- 17 5. Failure to comply with this order may result in the imposition of sanctions, including
18 dismissal of this action.
- 19 6. The clerk's office is directed to send plaintiff a complaint form.

20
21 IT IS SO ORDERED.

22 Dated: August 17, 2021

23 
24 JEREMY D. PETERSON
25 UNITED STATES MAGISTRATE JUDGE
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