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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY BOWMAN, aka ABUDLLAH
MUHAMMED NAYM SALAAM,

Plaintiff,

v.

MUNDEY, et al.,

Defendants.

No. 2:16-cv-0246-EFB P

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He filed his initial complaint on February 8, 2016. ECF No. 1. After review of that pleading, the court dismissed it as illegible. ECF No. 7 at 2. Plaintiff was afforded an opportunity to amend and he has done so. ECF No. 10. That amended complaint is before the court for screening.

I. Screening Requirement and Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b).

1 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
2 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
3 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
4 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
5 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
6 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
7 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
8 U.S. 662, 679 (2009).

9 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
10 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
11 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
12 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
13 678.

14 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
15 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
16 content that allows the court to draw the reasonable inference that the defendant is liable for the
17 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
18 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
19 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
20 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

21 II. Screening Order

22 Plaintiff’s amended complaint is deficient. Crucially, the pleading does not stand on its
23 own and, rather than explicitly articulating the alleged violations of plaintiff’s rights, makes
24 repeated references to the original, illegible complaint. ECF No. 10 at 3. It is well settled that an
25 amended complaint entirely supersedes the original. *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927
26 (9th Cir. 2012) (en banc). Further, this District’s local rules state that every pleading must be
27 “complete in itself without reference to the prior or superseded pleading,” and “[n]o pleading

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1 shall be deemed amended or supplemented until this Rule has been complied with.” Local Rule
2 220. Accordingly, the amended complaint must be dismissed.

3 Plaintiff will have a final opportunity to amend his complaint. *Lopez v. Smith*, 203 F.3d
4 1122, 1126-27 (9th Cir. 2000) (*en banc*) (district courts must afford pro se litigants an opportunity
5 to amend to correct any deficiency in their complaints). Should plaintiff choose to file an
6 amended complaint, the amended complaint shall clearly set forth the claims and allegations
7 against each defendant. Any amended complaint must cure the deficiencies identified above and
8 also adhere to the following requirements:

9 Any amended complaint must identify as a defendant only persons who personally
10 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
11 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
12 constitutional right if he does an act, participates in another’s act or omits to perform an act he is
13 legally required to do that causes the alleged deprivation).

14 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

15 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *George*
16 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

17 Any amended complaint must be written or typed so that it so that it is complete in itself
18 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
19 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
20 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
21 F.3d 1467, 1474 (9th Cir. 1997) (the “‘amended complaint supersedes the original, the latter
22 being treated thereafter as non-existent.’”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
23 1967)).

24 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
25 Procedure, this court’s Local Rules, or any court order may result in this action being dismissed.
26 *See* E.D. Cal. Local Rule 110.

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III. Summary of Order

Accordingly, IT IS HEREBY ORDERED that:

1. The amended complaint (ECF No. 10) is dismissed with leave to amend within 30 days. The complaint must bear the docket number assigned to this case and be titled "Second Amended Complaint." Failure to comply with this order will result in dismissal of this action for failure to prosecute. If plaintiff files a second amended complaint stating a cognizable claim the court will proceed with service of process by the United States Marshal.
2. The Clerk of Court is directed to send plaintiff the form for use in filing civil rights actions in this district.

Dated: April 19, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE