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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD SPENCE,
Plaintiff,
v.
JEFFREY BEARD, et al.,
Defendants.

No. 2:16-cv-1828 KJN P

ORDER

I. Introduction

Plaintiff is a state prisoner, 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).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is 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 to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account.

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

4 II. Screening Standards

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

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16 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.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

20 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
21 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
23 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
24 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
25 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
26 sufficient "to raise a right to relief above the speculative level." Id. at 555. However, "[s]pecific
27 facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what
28 the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93

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

6 III. Plaintiff's Complaint

7 Plaintiff claims that in 2014, Secretary Jeffrey Beard began the systematic repeal of the
8 Gilmore "1972 Order" by removing the entire Gilmore collection from A & B yards' law library
9 due to a change in legal vendor for the law library electronic delivery system ("LLEDS"), but no
10 new books were purchased. (ECF No. 1 at 3, referencing Gilmore v. California, No. C 66-45878
11 SI (N.D. Cal.)) Plaintiff alleges that the rule change was adopted by defendants Jugum and
12 Cortez, and are being followed by defendant Kernan. Plaintiff recites a laundry list of alleged
13 obstructions to court access: (a) priority legal user status is not honored, causing inmates to miss
14 court deadlines; (b) staff refuse to copy attachments and exhibits, after reading the inmates' legal
15 documents; (c) staff change library times without notice, and were often late or no shows,
16 resulting in one hour or less access per week; (d) custody staff refuse to release inmates for
17 library sessions, threaten inmates with disciplinary action for waiting in line for law library in
18 excess of ten minutes; (e) inmates routinely denied legal supplies, and limited to 10 sheets of
19 paper; (f) staff refuse to assist any inmate, illiterate or not, with filings, code sections or statutes;
20 (g) inmates are permitted one hour on LLEDS due to only nine LLEDS to accommodate 24
21 inmates. Plaintiff seeks injunctive relief addressing such obstructions, including putting the
22 Gilmore collection on the LLEDS while increasing the monitors to at least 15; install a suggestion
23 box; and assign a special master to monitor compliance.

24 IV. Procedural Background

25 In the transfer order issued by the United States District Court for the Northern District of
26 California, plaintiff was informed that on April 20, 2010, the injunction in Gilmore was
27 terminated and the case closed, and plaintiff's motion to intervene in Gilmore was denied. (ECF
28 No. 6 at 1.)

1 V. Governing Legal Standards

2 Since Gilmore was filed in 1966, laws governing prison law libraries have changed
3 dramatically. Prisoners have a constitutional right of access to the courts. Lewis v. Casey, 518
4 U.S. 343, 346 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977), limited in part on other
5 grounds by Lewis, 518 U.S. at 354. Because states must ensure indigent prisoners meaningful
6 access to the courts, prison officials are required to provide either (1) adequate law libraries, or
7 (2) adequate assistance from persons trained in the law. Bounds, 430 U.S. at 828. Under prior
8 law, Bounds was treated as establishing “core requirements,” such that a prisoner alleging
9 deprivation of the Bounds minima need not allege actual injury to a state constitutional claim.
10 Sands v. Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989). More recent Supreme Court precedent has
11 abolished such approach, however, providing that all inmate claims for interference with access to
12 the court include “actual injury” as an element. Casey v. Lewis, 518 U.S. 343 (1996).

13 In order to frame a claim of a denial of the right to access the courts, a prisoner must
14 establish that he has suffered “actual injury,” a jurisdictional requirement derived from the
15 standing doctrine. Casey, 518 U.S. at 349. An “actual injury” is “actual prejudice with respect to
16 contemplated or existing litigation, such as the inability to meet a filing deadline or to present a
17 claim.” Casey, 518 U.S. at 348 (citation and internal quotations omitted); see also Alvarez v.
18 Hill, 518 F.3d 1152, 1155 n.1 (9th Cir. 2008) (noting that “[f]ailure to show that a ‘non-frivolous
19 legal claim had been frustrated’ is fatal” to a claim for denial of access to legal materials) (citing
20 Casey, 518 U.S. at 353 & n.4). The right of access does not require the State to “enable the
21 prisoner to discover grievances” or to “litigate effectively once in court.” The Casey court further
22 limits the right of access to the courts, as follows:

23 Finally, we must observe that the injury requirement is not satisfied
24 by just any type of frustrated legal claim . . . Bounds does not
25 guarantee inmates the wherewithal to transform themselves into
26 litigating engines capable of filing everything from shareholder
27 derivative actions to slip-and-fall claims. The tools it requires to be
28 provided are those that the inmates need in order to attack their
sentences, directly or collaterally, and in order to challenge the
conditions of their confinement. Impairment of any other litigating
capacity is simply one of the incidental (and perfectly
constitutional) consequences of conviction and incarceration.

1 Casey, 518 U.S. at 346.

2 VI. Discussion

3 First, plaintiff is advised that he may not pursue claims on behalf of other inmates.
4 Plaintiff's putative class allegations are not cognizable. Class action plaintiffs must be
5 represented by counsel. See Fed. R. Civ. P. 23(g). "A litigant appearing in propria persona has
6 no authority to represent anyone other than himself." Russell v. United States, 308 F.2d 78, 79
7 (9th Cir. 1962); see also McShane v. United States, 366 F.2d 286 (9th Cir. 1966) (privilege to
8 appear without counsel is personal to the litigant). "It is plain error to permit [an] imprisoned
9 litigant who is unassisted by counsel to represent his fellow inmates in a class action." Oxendine
10 v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975). In direct terms, plaintiff cannot "fairly and
11 adequately protect the interests of the class," as required by Rule 23(a)(4) of the Federal Rules of
12 Civil Procedure. See Martin v. Middendorf, 420 F. Supp. 779 (D. D.C. 1976). This action,
13 therefore, will not be construed as a class action and instead will be construed as an individual
14 civil suit brought by plaintiff.

15 Second, plaintiff fails to address the actual injury sustained by plaintiff as a result of the
16 alleged obstructions listed in his complaint. Plaintiff must allege the actual prejudice he suffered,
17 if any, to his nonfrivolous legal claim, as required by the Supreme Court in Casey, discussed
18 above.

19 Third, plaintiff must name as defendants only those individuals who were connected with
20 the actual injury he sustained.

21 The Civil Rights Act under which this action was filed provides as follows:

22 Every person who, under color of [state law] . . . subjects, or causes
23 to be subjected, any citizen of the United States . . . to the
24 deprivation of any rights, privileges, or immunities secured by the
25 Constitution . . . shall be liable to the party injured in an action at
26 law, suit in equity, or other proper proceeding for redress.

25 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
26 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
27 Monell v. Department of Social Servs., 436 U.S. 658 (1978) ("Congress did not intend § 1983
28 liability to attach where . . . causation [is] absent."); Rizzo v. Goode, 423 U.S. 362 (1976) (no

1 affirmative link between the incidents of police misconduct and the adoption of any plan or policy
2 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another
3 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an
4 affirmative act, participates in another’s affirmative acts or omits to perform an act which he is
5 legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy,
6 588 F.2d 740, 743 (9th Cir. 1978).

7 Although supervisory government officials may not be held liable for the unconstitutional
8 conduct of their subordinates under a theory of respondeat superior, Ashcroft v. Iqbal, 556 U.S.
9 662, 676 (2009), they may be individually liable under Section 1983 if there exists “either (1) [the
10 supervisor’s] personal involvement in the constitutional deprivation; or (2) a sufficient causal
11 connection between the supervisor’s wrongful conduct and the constitutional violation.” Hansen
12 v. Black, 885 F.2d 642, 646 (9th Cir. 1989). The requisite causal connection between a
13 supervisor’s wrongful conduct and the violation of the prisoner’s constitutional rights can be
14 established in a number of ways, including by demonstrating that a supervisor’s own culpable
15 action or inaction in the training, supervision, or control of his subordinates was a cause of
16 plaintiff’s injury. Starr v. Baca, 652 F.3d 1202, 1208 (9th Cir. 2011); Larez v. City of Los
17 Angeles, 946 F.2d 630, 646 (9th Cir. 1991). A plaintiff must also show that the supervisor had
18 the requisite state of mind to establish liability, which turns on the requirement of the particular
19 claim -- and, more specifically, on the state of mind required by the particular claim -- not on a
20 generally applicable concept of supervisory liability. Oregon State University Student Alliance v.
21 Ray, 699 F.3d 1053, 1071 (9th Cir. 2012).

22 For all of these reasons, plaintiff’s complaint must be dismissed. The court will, however,
23 grant leave to file an amended complaint. Plaintiff shall file his amended complaint on the form
24 provided by the Clerk of the Court.

25 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
26 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. Rizzo v.
27 Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each
28 named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is

1 some affirmative link or connection between a defendant's actions and the claimed deprivation.
2 Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743
3 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil
4 rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

13 However, plaintiff is not required to re-submit his exhibits. Plaintiff may simply refer to
14 the previously-submitted exhibits, or he may ask the Clerk of the Court to re-append such exhibits
15 to his amended complaint. (ECF Nos. 1-1, 1-2, 1-3, 1-4.)

16 VII. Order

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

18 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

19 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
20 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.

21 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
22 Director of the California Department of Corrections and Rehabilitation filed concurrently
23 herewith.

24 3. Plaintiff's complaint is dismissed.

25 4. Within thirty days from the date of this order, plaintiff shall complete the attached
26 Notice of Amendment and submit the following documents to the court:

27 a. The completed Notice of Amendment; and

28 b. An original and one copy of the Amended Complaint.

1 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
2 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
3 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

4 Failure to file an amended complaint in accordance with this order may result in the
5 dismissal of this action.

6 5. The Clerk of the Court shall send plaintiff the form for filing a civil rights complaint by
7 a prisoner.

8 Dated: March 6, 2017

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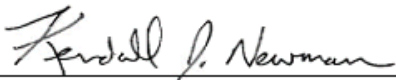
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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD SPENCE,
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Defendants.

No. 2:16-cv-1828 KJN P

NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order
filed _____.

DATED: _____ Amended Complaint

Plaintiff