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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TODD ROBBEN,
Plaintiff,
v.
JAMES R. WAGNER, et al.,
Defendants.

No. 2:16-cv-3022 JAM CKD P

ORDER

Plaintiff is an El Dorado County Jail prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. Since plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be 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 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 for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

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

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
8 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
10 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
11 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
12 Cir. 1989); Franklin, 745 F.2d at 1227.

13 In order to avoid dismissal for failure to state a claim a complaint must contain more than
14 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
15 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
16 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
17 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
18 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
19 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
20 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
21 at 678. When considering whether a complaint states a claim upon which relief can be granted,
22 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
23 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
24 U.S. 232, 236 (1974).

25 In his complaint, plaintiff sues various California judges. The Supreme Court has held
26 that judges acting within the course and scope of their judicial duties are absolutely immune from
27 liability for damages under § 1983. Pierson v. Ray, 386 U.S. 547 (1967). A judge is “subject to
28 liability only when he has acted in the ‘clear absence of all jurisdiction.’” Stump v. Sparkman,

1 435 U.S. 349, 356-7 (1978), quoting Bradley v. Fisher, 13 Wall. 335, 351 (1872). A judge's
2 jurisdiction is quite broad. The two-part test of Stump v. Sparkman determines its scope:

3 The relevant cases demonstrate that the factors determining whether
4 an act by a judge is a 'judicial' one relate to the nature of the act
5 itself, i.e., whether it is a function normally performed by a judge
6 and to the expectation of the parties, i.e., whether they dealt with
7 the judge in his judicial capacity.

8 Id. at 361.

9 In his complaint, plaintiff fails to point to facts suggesting any defendant has violated any
10 of his rights arising under federal law and is not immune from suit. Accordingly, plaintiff's
11 complaint will be dismissed. Plaintiff will be granted one opportunity to amend his pleadings in
12 order to cure the deficiencies therein.

13 Generally speaking, if plaintiff chooses to amend the complaint, plaintiff must
14 demonstrate 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, plaintiff's
16 amended complaint must allege in specific terms how each named defendant is involved. There
17 can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection
18 between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362
19 (1976). Furthermore, vague and conclusory allegations of official participation in civil rights
20 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

28 The court notes that on March 1, 2017, plaintiff filed a motion seeking permission to
utilize the court's electronic filing system. Plaintiff is incarcerated and does not demonstrate an

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1 ability to file documents electronically. Therefore, his request will be denied. If plaintiff is
2 released from custody at any time during the life of this suit, he may renew his request.

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

4 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 6) is granted.

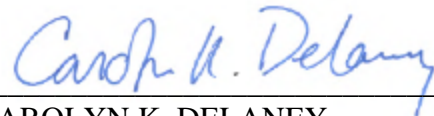
5 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
6 shall be collected and paid in accordance with this court's order to the El Dorado County Sheriff
7 filed concurrently herewith.

8 3. Plaintiff's complaint is dismissed.

9 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
10 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
11 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
12 number assigned this case and must be labeled "Amended Complaint." Failure to file an
13 amended complaint in accordance with this order will result in a recommendation that this action
14 be dismissed.

15 5. Plaintiff's request that he be permitted to file documents electronically (ECF No. 7) is
16 denied.

17 Dated: March 17, 2017



18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE

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