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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES R. COOKS,
Plaintiff,
v.
CALIFORNIA STATE PRISON,
SOLANO, et al.,
Defendants.

No. 2:17-cv-0049 JAM CKD P

ORDER

Plaintiff is a state 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

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

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

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

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

27 The court finds the allegations in plaintiff's complaint so vague and conclusory that it fails
28 to state a claim upon which relief can be granted. Although the Federal Rules of Civil Procedure

1 adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the
2 claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir.
3 1984). Plaintiff must allege with at least some degree of particularity overt acts which defendants
4 engaged in that support plaintiff's claim. Id. Plaintiff's complaint must be dismissed. The court
5 will, however, grant leave to file an amended complaint.

6 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
7 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
8 Cassidy, 625 F.2d 227 (9th Cir. 1980). While it is not entirely clear, it appears plaintiff asserts he
9 has been denied access to courts. Plaintiff is informed that prisoners have a Constitutional right
10 of access to courts. Bounds v. Smith, 430 U.S. 817, 821 (1977). Generally speaking, there are
11 two types of denial of access to courts claims: 1) those involving the right to assistance through,
12 among other things, provision of legal materials or legal advice; and 2) those involving the literal
13 denial of access to the courts, e.g. not permitting an inmate to communicate with a court. Silva
14 v. Di Vittorio, 658 F.3d 1090, 1102 (9th Cir. 2011) overruled on other grounds in Coleman v.
15 Tollefson, 135 S. Ct. 1759, 1763-64 (2015). With respect to an inmate's challenge to his
16 conviction or sentence and with respect to actions under 42 U.S.C. § 1983 for violations of civil
17 rights, some affirmative assistance is required. Lewis v. Casey, 518 U.S. 343, 354 (1996). With
18 respect to other civil actions, inmates have the more minimal right to not literally be denied
19 access through the erection of barriers to claims that have a reasonable basis in law or fact. Silva,
20 658 F.3d at 1102-03. In either case, the right to access is "ancillary to the underlying claim,
21 without which a plaintiff cannot have suffered injury by being shut out of court." Christopher v.
22 Harbury, 536 U.S. 403, 415 (2002).

23 Also, plaintiff's amended complaint must allege in specific terms how each named
24 defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some
25 affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo
26 v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official
27 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
28 268 (9th Cir. 1982).

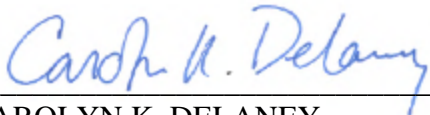
1 Further, plaintiff's complaint is too long and violates Fed. R. Civ. P. 8(a)(2) which
2 requires that pleadings contain a "short and plain statement of the claim showing that the pleader
3 is entitled to relief." Plaintiff's amended complaint shall be limited to 20 pages and shall not be
4 repetitive, contain immaterial cites to law, or irrelevant assertions of fact.

5 Finally, 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 is because, as a
8 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
9 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
10 longer serves any function in the case. Therefore, in an amended complaint, as in an original
11 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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

- 13 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2 & 6) is granted.
- 14 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
15 shall be collected and paid in accordance with this court's order to the Director of the California
16 Department of Corrections and Rehabilitation filed concurrently herewith.
- 17 3. Plaintiff's complaint is dismissed.
- 18 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
19 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
20 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
21 number assigned this case and must be labeled "Amended Complaint." Failure to file an
22 amended complaint in accordance with this order will result in a recommendation that this action
23 be dismissed.

24 Dated: April 5, 2017

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE

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