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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSIE DEE TURNER,
Plaintiff,
v.
JERRY BROWN, et. al.,
Defendants.

No. 2:17-cv-00087 AC P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint (ECF No. 13), plaintiff has filed two applications to proceed in forma pauperis under 28 U.S.C. § 1915 (ECF Nos. 11 & 14) and a motion to appoint counsel (ECF No. 6).

I. Application to Proceed In Forma Pauperis

The court has reviewed the latter of plaintiff’s two applications (ECF No. 14) and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2). Plaintiff’s other application (ECF No. 11) will be denied as moot.

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1 **II. Motion to Appoint Counsel**

2 Plaintiff is a state prisoner proceeding without counsel in an action brought under 42
3 U.S.C. § 1983. He requests that the court appoint counsel. District courts lack authority to
4 require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States
5 Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an
6 attorney to voluntarily to represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell v.
7 Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36
8 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must
9 consider the likelihood of success on the merits as well as the ability of the plaintiff to articulate
10 his claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560
11 F.3d 965, 970 (9th Cir. 2009). Having considered those factors, the court finds there are no
12 exceptional circumstances in this case.

13 Plaintiff’s motion to appoint counsel (ECF No. 6) will be denied.

14 **III. Screening Requirements**

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

20 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
21 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
22 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
23 meritless legal theories or whose factual contentions are clearly baseless.” Jackson v. Arizona,
24 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute
25 on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490
26 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,
27 has an arguable legal and factual basis. Id.

28 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the

1 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
2 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
3 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
4 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
5 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
6 allegations sufficient “to raise a right to relief above the speculative level.” Id. (citations
7 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
8 merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original)
9 (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d
10 ed. 2004)).

11 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
12 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell
13 Atl. Corp., 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
14 content that allows the court to draw the reasonable inference that the defendant is liable for the
15 misconduct alleged.” Id. (citing Bell Atl. Corp., 550 U.S. at 556). In reviewing a complaint
16 under this standard, the court must accept as true the allegations of the complaint in question,
17 Hospital Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), as well as construe the pleading
18 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, Jenkins v.
19 McKeithen, 395 U.S. 411, 421 (1969).

20 **IV. Screening Order**

21 Plaintiff’s allegations are vague. He alleges that, sometime after arriving at Deuel
22 Vocational Institution, he was informed by defendant Enos of a conspiracy against him. ECF No.
23 13 at 4. Plaintiff claims that the conspiracy involved a correctional officer, an institutional gang
24 investigator, and four inmates – none of whom are identified by name. Id. The complaint never
25 clarifies the contours of this conspiracy or how the named defendants are involved in it. Instead,
26 plaintiff goes on to allege that: (1) unnamed correctional officers are promoting violence between
27 inmates; (2) confidential information contradicts his validation as a member of the “Nazi

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1 Lowriders’ prison gang; and (3) he was shot three times by an unnamed correctional officer. Id.
2 at 5-9.

3 Plaintiff refers to the exhibits attached to his complaint, but these do little to clarify his
4 allegations. The roughly fifty pages of exhibits contain various documents related to his gang
5 classification and his prison grievance appeals, but none provide a clear indication of how any of
6 the defendants violated his constitutional rights. The court will not hazard to guess at what
7 plaintiff’s claims might be. Instead, it will dismiss his complaint with leave to amend.

8 **V. Leave to Amend**

9 Plaintiff’s complaint is dismissed with leave to amend. If plaintiff chooses to file an
10 amended complaint it should observe the following:

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

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

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

19 Any amended complaint must be written or typed so that it so that it is complete in itself
20 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
21 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
22 earlier filed complaint no longer serves any function in the case. See Forsyth v. Humana, 114
23 F.3d 1467, 1474 (9th Cir. 1997) (the “‘amended complaint supersedes the original, the latter
24 being treated thereafter as non-existent.’”) (quoting Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
25 1967)).

26 Finally, the court notes that any amended complaint should be as concise as possible in
27 fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of
28 procedural or factual background which has no bearing on his legal claims. He should also take

1 pains to ensure that his amended complaint is as legible as possible. This refers not only to
2 penmanship, but also spacing and organization. Lengthy, unbroken paragraphs can be difficult to
3 read when handwritten and plaintiff would do well to avoid them wherever possible.

4 **VI. Summary of the Order**

5 You have been granted in forma pauperis status and will not have to pay the entire filing
6 fee immediately. Your motion for appointment of counsel is being denied. Prisoners are not
7 entitled to counsel as a matter of right in a civil action.

8 The court has found that your claims, as stated, are not suitable to proceed. It is unclear
9 what your precise allegations are or how each of the named defendants personally violated your
10 rights. You are being given a chance to submit an amended complaint which better explains your
11 claims.

12 **VII. Conclusion**

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's application to proceed in forma pauperis (ECF No. 14) is granted.
- 15 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
16 in accordance with the notice to the California Department of Corrections and
17 Rehabilitation filed concurrently herewith.
- 18 3. Plaintiff's application to proceed in forma pauperis (ECF No. 11) is denied as
19 moot.
- 20 4. Plaintiff's motion to appoint counsel (ECF No. 6) is denied.
- 21 5. Plaintiff's complaint is dismissed with leave to amend within 30 days of service of
22 this order.
- 23 6. Failure to comply with this order may result in dismissal of this action.

24 DATED: June 12, 2017

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26 ALLISON CLAIRE
27 UNITED STATES MAGISTRATE JUDGE
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