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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIO DINERO SESSOMS,
Plaintiff,
v.
JOHN PATRICK KELLER, et al.,
Defendants.

No. 2:17-cv-0304-EFB P

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND PURSUANT TO 28
U.S.C. § 1915A

Plaintiff is a county inmate proceeding without counsel and in forma pauperis in an action brought under 42 U.S.C. § 1983.¹ The court must screen plaintiff’s complaint pursuant to 28 U.S.C. § 1915A.

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 This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. *See* E.D. Cal. Local Rules, Appx. A, at (k)(4).

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 complaint (ECF No. 1) names as defendants the Sacramento detectives
23 involved in the investigation leading up to his 2001 murder conviction, which was vacated in
24 2015 on habeas review. *See Sessoms v. Grounds*, 776 F.3d 615 (9th Cir. 2015) (en banc). He
25 claims that detective Keller coerced a witness into making false statements and falsely identifying
26 plaintiff and his brother as being in the witness’s car. ECF No. 1 at 3, 4. Two days after the
27 warrant had been issued for plaintiff’s arrest, Keller allegedly drafted a police report with false
28 statements and material omissions. *Id.* at 3, 4. Detectives Woods and Winfield allegedly helped

1 Keller “cover up” the “intentional omission.” *Id.* at 3. Plaintiff also alleges that his trial counsel
2 should have objected to the arrest warrant as “unsigned.” *Id.* at 1.

3 According to plaintiff, Keller “knowingly violated the law by intentionally writing a false
4 report to be used to serve as probable cause to have a ‘neutral and detached judicial power’ issue
5 a warrant for [plaintiff’s] arrest.” *Id.* at 4. In the next sentence, however, plaintiff explains that
6 Keller “wrote this report two days *after* the warrant for [his] arrest was issued.” *Id.* Thus, it is
7 not clear what impact, if any, Keller’s false statements or omissions had in establishing probable
8 cause for plaintiff’s arrest warrant. *See Bravo v. City of Santa Maria*, 665 F.3d 1076, 1087 (9th
9 Cir. 2011) (Fourth Amendment judicial deception claim requires (1) that the warrant affidavit
10 contained misrepresentations or omissions material to the finding of probable cause, and (2) a
11 substantial showing that the misrepresentations or omissions were made intentionally or with
12 reckless disregard for the truth). Likewise, it is not clear how Woods or Winfield personally
13 violated plaintiff’s Fourth Amendment rights by “covering up” an “intentional omission” made
14 after the warrant for plaintiff’s arrest had already been issued. For these reasons, plaintiff’s
15 complaint will be dismissed for failure to state a claim, but he will be granted leave to amend to
16 clarify his allegations.

17 **III. Leave to Amend**

18 Plaintiff may choose to file an amended complaint which states a cognizable claim. Any
19 amended complaint must identify as a defendant only persons who personally participated in a
20 substantial way in depriving him of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740,
21 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he
22 does an act, participates in another’s act or omits to perform an act he is legally required to do
23 that causes the alleged deprivation).

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

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

27 Any amended complaint must be written or typed so that it so that it is complete in itself
28 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended

1 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
2 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
3 F.3d 1467, 1474 (9th Cir. 1997) (the “‘amended complaint supersedes the original, the latter
4 being treated thereafter as non-existent.’”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
5 1967)).

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

9 **IV. Conclusion**

10 Accordingly, IT IS HEREBY ORDERED that plaintiff’s complaint is dismissed with
11 leave to amend within 30 days of service of this order. Failure to comply with this order may
12 result in dismissal of this action.

13 DATED: July 12, 2017.

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15 EDMUND F. BRENNAN
16 UNITED STATES MAGISTRATE JUDGE
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