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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY A SERMENO,
Plaintiff,
v.
M. IRMER, et atl.,
Defendants.

No. 2: 17-cv-00745 GEB KJN P

ORDER

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 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 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. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 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 when 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), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
17 1227.

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

1 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most
2 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other
3 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 Named as defendants are three Butte County Superior Court Deputy Clerks, M. Irmer, A.
5 Irmer and K. Flener. Plaintiff alleges that in March 2016 and July 2016, defendants M. Irmer and
6 A. Irmer refused to file documents he submitted to the court for filing, and instead returned them
7 to plaintiff. Plaintiff alleges that this conduct violated his constitutional right to access the courts.
8 Plaintiff alleges that defendant Flener failed to properly train defendants M. Irmer and A. Irmer.
9 Plaintiff also alleges that in September 2016, legal documents he sought to file in support of a
10 habeas corpus petition to initiate parentage/paternity proceedings in the Butte County Superior
11 Court were wrongly returned to him. Plaintiff seeks money damages and injunctive relief.

12 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey,
13 518 U.S. 343, 346 (1996). However, the right is limited to direct criminal appeals, habeas
14 petitions challenging the validity of convictions, and civil rights actions. Id., at 354. Further, in
15 order to state a claim for the denial of court access, a prisoner must establish that he suffered an
16 actual injury. Id. at 349. “[A]ctual injury [is] actual prejudice with respect to contemplated or
17 existing litigation, such as the ability to meet a filing deadline or to present a claim.” Id. at 348.
18 The prisoner “must identify a ‘nonfrivolous,’ ‘arguable’ underlying claim” and the specific
19 remedy he lost, in order to give the defendant fair notice of his allegations. Christopher v.
20 Harbury, 536 U.S. 403, 415 (2002) (quoting Lewis, 518 U.S. at 353 & n.3).

21 While plaintiff alleges that defendants A. Irmer and M. Irmer refused to file his legal
22 documents, plaintiff does not describe these documents. The complaint does not establish the
23 nature of those documents or demonstrate whether they were “direct criminal appeals, habeas
24 petitions, or civil rights actions,” if at all. Nor does plaintiff’s complaint establish how the
25 defendants’ actions rendered the state court remedies ineffective. Instead, the complaint merely
26 makes conclusory statements outlining defendants alleged culpable behavior, namely that
27 defendants failed to file documents and returned them to plaintiff. These allegations are not
28 sufficient to state a claim.

1 Plaintiff also alleges that documents regarding a paternity action were wrongly returned to
2 him. While plaintiff does not allege that any defendant was involved in this alleged deprivation,
3 the right to access the courts does not include the right to file paternity actions.

4 The undersigned also observes that court clerks have absolute quasi-judicial immunity
5 from damages for civil rights violations when they perform tasks that are an integral part of the
6 judicial process. Mullis v. U.S. Bankr. Ct. For the D. Of Nev., 828 F.2d 1385, 1390 (9th Cir.
7 1987); see also Morrison v. Jones, 607 F.2d 1269, 1273 (9th Cir. 1979). Clerks qualify for quasi-
8 judicial immunity unless they acted in the clear absence of jurisdiction. Mullis, 828 F.2d 1385.
9 In Mullis, a debtor brought a civil rights action against bankruptcy court clerks. The debtor
10 alleged that the bankruptcy court clerks accepted and filed his bankruptcy petition, but then
11 refused to accept and file an amended petition in violation of his constitutional rights. The Ninth
12 Circuit held that the court clerks' refusal to accept and file an amended petition was a basic and
13 integral part of the judicial process, and as such, the clerks were entitled to quasi-judicial
14 immunity from damages. Id.

15 Here, while plaintiff claims that defendants refused to file his documents, plaintiff fails to
16 explain the details surrounding the refusal. Nonetheless, the defendants' decisions regarding
17 whether to accept and file documents is a basic and integral part of the judicial process.
18 Plaintiff's complaint therefore makes no allegations that would suggest that the defendants acted
19 outside of their role as court clerks. They are therefore entitled to immunity from plaintiff's claim
20 for damages. Mullis, 828 F.2d at 1390; see also Juarez v. Clerk, 2009 WL 385796 at *1 (N.D.
21 Cal. Feb. 13, 2009) (district court clerk was entitled to absolute quasi-judicial immunity for
22 allegedly failing to send plaintiff court opinion denying his previously filed federal case); White
23 v. Dep't of Corrs., 2008 WL 5246161 at *3 (E.D. Cal. Dec. 15, 2008) (California Supreme Court
24 clerk is immune from damages for allegedly refusing to give plaintiff's court documents to
25 magistrate judge).

26 For the reasons discussed above, plaintiff's complaint is dismissed with leave to amend.

27 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
28 about which he complains resulted in a deprivation of plaintiff's constitutional rights. Rizzo v.

1 Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each
2 named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is
3 some affirmative link or connection between a defendant's actions and the claimed deprivation.
4 Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743
5 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil
6 rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

16 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
17 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
18 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
19 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
20 Director of the California Department of Corrections and Rehabilitation filed concurrently
21 herewith.

22 3. Plaintiff's complaint is dismissed.

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

25 a. The completed Notice of Amendment; and

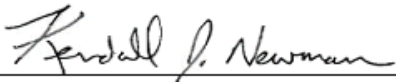
26 b. An original and one copy of the Amended Complaint.

27 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
28 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must

1 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

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

4 Dated: April 12, 2017

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6 KENDALL J. NEWMAN
7 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY ALTAMIRANO SERMENO,
Plaintiff,
v.
M. IRMER, et al.,
Defendants.

No. 2: 17-cv-00745 GEB KJN P

NOTICE OF AMENDMENT

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

DATED: _____ Amended Complaint

Plaintiff