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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD LEE CANADA,
Plaintiff,
v.
J. JONES,
Defendant.

No. 2:17-cv-1322 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) and plaintiff has consented to have all matters in this action before a United States Magistrate Judge. See 28 U.S.C. § 636(c).

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).

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1 The court has reviewed plaintiff's complaint and finds that it fails to state a claim upon
2 which relief can be granted under federal law. Plaintiff's complaint must be dismissed. The
3 court will, however, grant leave to file an amended complaint.

4 Plaintiff seeks injunctive relief concerning mental health treatment. Plaintiff's complaint
5 concerns treatment he received while committed to the California Department of State Hospitals.
6 But when plaintiff filed his complaint, he was housed at North Kern State Prison, and is now
7 housed at the California Health Care Facility. If plaintiff seeks injunctive relief in an amended
8 complaint, he must explain exactly what sort of relief he seeks and the basis for the relief which
9 must concern the treatment he is now receiving. He must also identify a defendant, such as a
10 primary care physician, whom the court could order to provide the relief requested.

11 To the extent plaintiff seeks damages in an amended complaint, he must explicitly say so
12 and plaintiff must allege in specific terms how each named defendant is involved. There can be
13 no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
14 defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976).
15 Furthermore, vague and conclusory allegations of official participation in civil rights violations
16 are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

17 It appears plaintiff complains about the use of excessive force. In order to adequately
18 allege a claim for damages based upon excessive force, plaintiff must allege facts showing the
19 amount of force used by a defendant was unnecessary and resulted in a wanton infliction of pain.
20 Hudson v. McMillian, 503 U.S. 1, 5 (1992). Not every malevolent touch by a prison guard gives
21 rise to a federal cause of action. Wilkins v. Gaddy, 559 U.S. 34, 37 (2010). But, the malicious
22 and sadistic use of force to cause harm generally violates contemporary standards of decency. Id.

23 Plaintiff also suggests he was retaliated against for filing grievances or other complaints
24 while housed with the Department of State Hospitals. Prison officials generally cannot retaliate
25 against inmates for exercising First Amendment rights. Rizzo v. Dawson, 778 F.2d 527, 531 (9th
26 Cir. 1985). A First Amendment retaliation claim has five elements: 1) the retaliated-against
27 conduct is protected; 2) a defendant took adverse action against the plaintiff; 3) there is a causal
28 connection between the protected conduct and the adverse action; 4) the defendant's acts would

1 chill future First Amendment activities of a reasonable person; and 5) the retaliatory action did
2 not advance legitimate correctional goals. Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir.
3 2012).

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

11 Finally, the court notes that plaintiff has several lawsuits pending in this court. In his
12 amended complaint, plaintiff shall not include any claims upon which he is still proceeding in an
13 action filed prior to this one.

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

15 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 9 & 12) is granted.

16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
17 shall be collected and paid in accordance with this court's order to the Director of the California
18 Department of Corrections and Rehabilitation filed concurrently herewith.

19 3. Plaintiff's complaint is dismissed.

20 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
21 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
22 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
23 number assigned this case and must be labeled "Amended Complaint." Failure to file an

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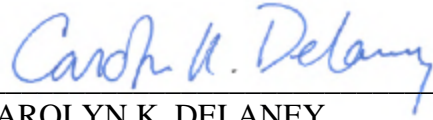
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1 amended complaint in accordance with this order will result in a recommendation that this action
2 be dismissed.

3 Dated: November 16, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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