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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LISA BELYEW,
Plaintiff,
v.
CFMG, et al.,
Defendants.

No. 2:17-cv-1816 KJN P

ORDER

Plaintiff is a pretrial detainee, proceeding pro se, and presently housed in the Napa State Hospital. 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.

1 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
2 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
3 § 1915(b)(2).

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

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
11 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
15 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
16 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
17 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
18 1227.

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

1 In reviewing a complaint under this standard, the court must accept as true the allegations of the
2 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most
3 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other
4 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

5 Plaintiff alleges her constitutional rights were violated by defendant Johansen’s discussion
6 with plaintiff on August 20, 2017, concerning involuntary medication under California Penal
7 Code § 1368, and plaintiff told Johansen that plaintiff is competent and that a court held the
8 competency hearing without plaintiff’s presence. (ECF No. 1 at 6.) Plaintiff states she is “going
9 to be injured” due to Johansen’s ‘false diagnosis.’” (Id.) In her second claim, plaintiff disagrees
10 with the findings in defendant Johansen’s report, and “feels this is another attempt to try to force
11 medication/treatment on a competent person.” (ECF No. 1 at 9.) Plaintiff contends she is not
12 paranoid, and claims that defendant’s report is “slanderous/libelous.” (Id.) Plaintiff seeks money
13 damages if defendant’s “libelous report” gets used in any way to forcibly medicate plaintiff, and
14 wants the report purged from plaintiff’s medical file. (ECF No. 1 at 14.)

15 First, plaintiff includes no charging allegations as to defendant “CFMG.” But to the
16 extent plaintiff attempts to sue an agency of the state of California, CFMG is an improper
17 defendant. State agencies, such as the California Department of Corrections and Rehabilitation
18 (CDCR) and CFMG, are immune from suit under the Eleventh Amendment. See Will v.
19 Michigan Dep’t of State Police, 491 U.S. 58, 66 (1989); Lucas v. Dep’t of Corr., 66 F.3d 245,
20 248 (9th Cir. 1995) (per curiam) (holding that prisoner’s Eighth Amendment claims against
21 CDCR for damages and injunctive relief were barred by Eleventh Amendment immunity);
22 Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984) (Eleventh Amendment
23 immunity extends to state agencies). Thus, defendant CFMG is dismissed.

24 Second, plaintiff is required to establish standing for each claim she asserts.
25 DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 352 (2006). If a plaintiff has no standing, the
26 court has no subject matter jurisdiction. Nat’l Wildlife Fed’n v. Adams, 629 F.2d 587, 593 n. 11
27 (9th Cir. 1980) (“[B]efore reaching a decision on the merits, we [are required to] address the
28 standing issue to determine if we have jurisdiction.”). There are three requirements that must be

1 met for a plaintiff to have standing: (1) the plaintiff must have suffered an “injury in fact” -- an
2 invasion of a legally protected interest which is both concrete and particularized and actual or
3 imminent; (2) there must be a causal connection between the injury and the conduct complained
4 of; and (3) it must be likely that the injury will be redressed by a favorable decision. Lujan v.
5 Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); Wash. Legal Found. v. Legal Found. of
6 Wash., 271 F.3d 835, 847 (9th Cir. 2001) (en banc).

7 Here, plaintiff has not shown she has actual standing to sue because the complaint and its
8 attachments demonstrate only a “potential” injury; plaintiff has not suffered an actual injury based
9 on defendant’s actions. Rather, it appears that another court held a competency hearing and
10 ordered that plaintiff be involuntarily medicated under California Penal Code § 1368. In the
11 instant complaint, plaintiff is not challenging her commitment to Napa Valley State Hospital, or a
12 specific order requiring involuntary medication, and plaintiff may challenge such order in the
13 court where her competency hearing was held. Plaintiff’s allegation that defendant’s report may
14 be used at some future date is too speculative to find plaintiff suffered an actual injury in fact.

15 Third, plaintiff’s allegations as to defendant Johansen fail to state a cognizable claim
16 based on deliberate indifference to plaintiff’s serious medical needs. Plaintiff’s mere
17 disagreement with the defendant’s mental health findings is insufficient to state a cognizable civil
18 rights claim. See Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981) (“a difference of
19 opinion between a prisoner-patient and prison medical authorities regarding treatment does not
20 give rise to a [§]1983 claim.”)

21 Fourth, plaintiff’s second claim fails to state a cognizable civil rights claim. Allegations
22 of harassment, embarrassment, and defamation are not cognizable under section 1983. Rutledge
23 v. Arizona Bd. of Regents, 660 F.2d 1345, 1353 (9th Cir. 1981), aff’d sub nom. Kush v.
24 Rutledge, 460 U.S. 719 (1983); see also Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir.1982)
25 (allegations of harassment with regards to medical problems not cognizable); Ellingburg v. Lucas,
26 518 F.2d 1196, 1197 (8th Cir. 1975) (Arkansas state prisoner does not have cause of action under
27 § 1983 for being called obscene name by prison employee); Batton v. North Carolina, 501

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1 F.Supp. 1173, 1180 (E.D. N.C. 1980) (mere verbal abuse by prison officials does not state claim
2 under § 1983).

3 The court finds the allegations in plaintiff's complaint so vague and conclusory that it is
4 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
5 court has determined that the complaint does not contain a short and plain statement as required
6 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a
7 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones
8 v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least
9 some degree of particularity overt acts which defendants engaged in that support plaintiff's claim.
10 Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the
11 complaint must be dismissed. It is unclear whether plaintiff can amend the complaint to state a
12 cognizable civil rights claim. However, the court will grant leave to file an amended complaint.

13 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
14 about which he complains resulted in a deprivation of plaintiff's constitutional rights. Rizzo v.
15 Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each
16 named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is
17 some affirmative link or connection between a defendant's actions and the claimed deprivation.
18 Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743
19 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil
20 rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

1. Plaintiff's request for leave to proceed in forma pauperis is granted.
 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
3. Plaintiff's complaint is dismissed.
 4. Within thirty days from the date of this order, plaintiff shall complete the attached

is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Mental Health or a designee filed concurrently herewith.

Notice of Amendment and submit the following documents to the court:

- a. The completed Notice of Amendment; and
- b. An original and one copy of the Amended Complaint.

Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must also bear the docket number assigned to this case and must be labeled "Amended Complaint."

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

Dated: October 16, 2017


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LISA BELYEW,
Plaintiff,
v.
CFMG, et al.,
Defendants.

No. 2:17-cv-1816 KJN P

ORDER

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

DATED: _____ Amended Complaint

Plaintiff