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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAPHAEL MAURICE JOHNSON,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

No. 2:17-cv-2166 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.

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 violations of his civil rights at R.J. Donovan Correctional Facility
6 (“RJDCF”) and at the California Medical Facility (“CMF”). RJDCF is located in the United
7 States District Court for the Southern District of California.

8 Court records indicate that plaintiff filed an action in the Fresno Division of this court
9 raising similar, if not the same, claims regarding conditions at RJDCF. See 1:17-cv-1380 SKO
10 P.¹ On October 17, 2017, 1:17-cv-1380 SKO P was transferred from the Fresno Division to the
11 District Court for the Southern District of California. Accordingly, plaintiff’s claims regarding
12 RJDCF are dismissed because they are duplicative of the claims raised in 1:17-cv-1380 SKO P,
13 which will now be litigated in the Southern District. See Cato v. United States, 70 F.3d 1103,
14 1105 n.2 (9th Cir. 1995) (prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915 if
15 it “merely repeats pending or previously litigated claims.”)

16 Plaintiff also alleges that he is being confined past his release date. Plaintiff seeks money
17 damages regarding his alleged illegal confinement. Plaintiff may also be requesting an immediate
18 release from prison.

19 When a state prisoner challenges the legality of his custody and the relief he seeks is a
20 determination that he is entitled to an earlier or immediate release, such a challenge is not
21 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ
22 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Thus, where a § 1983
23 action seeking monetary damages or declaratory relief alleges constitutional violations which
24 would necessarily imply the invalidity of the prisoner's underlying conviction or sentence, or the
25 result of a prison disciplinary hearing resulting in imposition of a sanction affecting the overall
26 length of confinement, such a claim is not cognizable under § 1983 unless the conviction or

27 ¹ Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80 F.R.D. 626,
28 635 n.1 (N.D. Cal. 1978), aff'd, 645 F.2d 699 (9th Cir.), cert. denied, 454 U.S. 1126 (1981).

1 sentence has first been invalidated on appeal, by habeas petition, or through some similar
2 proceeding. See Heck v. Humphrey, 512 U.S. 477, 483–84 (1994) (concluding that § 1983 claim
3 not cognizable because allegations were akin to malicious prosecution action which includes as
4 an element a finding that the criminal proceeding was concluded in plaintiff's favor).

5 To the extent plaintiff seeks an order directing prison officials to release him from
6 custody, he must file a habeas corpus petition for this relief. With respect to plaintiff's claim for
7 damages, the only evidence provided with plaintiff's complaint in support of his claim that he has
8 been ordered released is a minute order from the San Bernardino County Superior Court dated
9 December 14, 2016. (ECF No. 1 at 26.) This minute order lists a number of charges against
10 plaintiff. (Id.) This minute order includes a section titled "Custody Status," which states: "Case
11 Custody: Released." (Id.) This minute order also indicates that plaintiff, his lawyer and the
12 district attorney were not present. (Id.) The minute order contains a section titled "Proceedings,"
13 which states: "Court has read and considered reports filed by: Defendant. No action taken."
14 (Id.)

15 The minute order described above does not clearly demonstrate that plaintiff is entitled to
16 be released from custody on the cases listed on this document. Accordingly, plaintiff's claim for
17 damages on grounds that he is being held past his release date is dismissed.

18 Turning to the claims challenging conditions at CMF, plaintiff names three defendants:
19 the California Department of Corrections and Rehabilitation ("CDCR"), CDCR Director Kernan
20 and the CMF Warden.

21 For the reasons stated herein, plaintiff's claims against defendant CDCR are barred by the
22 Eleventh Amendment. In general, the Eleventh Amendment bars suits against a state, absent the
23 state's affirmative waiver of its immunity or congressional abrogation of that immunity.
24 Pennhurst v. Halderman, 465 U.S. 89, 98–99, (1984); see also Krainski v. Nev. ex rel. Bd. of
25 Regents of Nev. Sys. of Higher Educ., 616 F.3d 963, 967 (9th Cir. 2010) ("The Eleventh
26 Amendment bars suits against the State or its agencies for all types of relief, absent unequivocal
27 consent by the state."). The State of California has not consented to suit. See Brown v.
28 California Dept. of Corrections, 554 F.3d 747, 752 (9th Cir. 2009) (State of California has not

1 waived its Eleventh Amendment immunity with respect to claims brought under § 1983 in federal
2 court). Accordingly, plaintiff's claims against defendant CDCR are barred by the Eleventh
3 Amendment.

4 Plaintiff alleges that that on October 6, 2017, he was attacked by correctional officers in
5 his cell at CMF. (ECF No. 1 at 15-16.) However, plaintiff does not name as defendants the
6 officers who allegedly attacked him. In addition, plaintiff does not describe how defendants
7 Kernan and CMF Warden were involved in the alleged attack.

8 The Civil Rights Act under which this action was filed provides as follows:

9 Every person who, under color of [state law] . . . subjects, or causes
10 to be subjected, any citizen of the United States . . . to the
11 deprivation of any rights, privileges, or immunities secured by the
12 Constitution . . . shall be liable to the party injured in an action at
13 law, suit in equity, or other proper proceeding for redress.

14 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
15 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
16 Monell v. Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not intend § 1983
17 liability to attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976) (no
18 affirmative link between the incidents of police misconduct and the adoption of any plan or policy
19 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another
20 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an
21 affirmative act, participates in another’s affirmative acts or omits to perform an act which he is
22 legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy,
23 588 F.2d 740, 743 (9th Cir. 1978).

24 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
25 their employees under a theory of respondeat superior and, therefore, when a named defendant
26 holds a supervisory position, the causal link between him and the claimed constitutional
27 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
28 (no liability where there is no allegation of personal participation); Mosher v. Saalfeld, 589 F.2d
438, 441 (9th Cir. 1978) (no liability where there is no evidence of personal participation), cert.
denied, 442 U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of

1 official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673
2 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal
3 participation is insufficient).

4 Because plaintiff has failed to link defendants Kernan and CMF Warden to his claim
5 alleging that he was attacked at CMF, the claims against these defendants are dismissed.

6 In summary, if plaintiff files an amended complaint, he should not include his claims
7 challenging conditions at RJDCF. Plaintiff should also not include any request for his release
8 from custody, as this claim should be raised in a habeas corpus petition. If plaintiff alleges a
9 claim for damages based on his alleged improper confinement, he must include some
10 documentation demonstrating that he is entitled to immediate release. Finally, the amended
11 complaint must link the named defendants to the alleged deprivations.

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

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

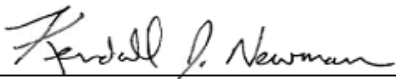
Notice of Amendment and submit the following documents to the court:

- 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: December 13, 2017


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAPHAEL MAURICE JOHNSON,
Plaintiff,
v.
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
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Defendants.

No. 2:17-cv-2166 KJN P

NOTICE OF AMENDMENT

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

Amended Complaint

DATED: _____

Plaintiff