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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES R. COOKS,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA STATE PRISON,  
SOLANO, et al.,  
  
Defendants.

No. 2:17-cv-2309-MCE-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel. He originally brought this action in the Placer County Superior Court. ECF No. 1-1 at 2. Defendants removed the action to this court on November 2, 2017. ECF No. 1. Attached to their notice of removal is a copy of plaintiff's complaint. ECF No. 1-1. Defendants now request that the court screen the complaint pursuant to 28 U.S.C. § 1915A, and dismiss any claims that are frivolous, malicious, or which fail to state a cognizable claim. ECF No. 1 at 2. After reviewing plaintiff's complaint, the court concludes that it fails to comply with the federal rules of civil procedure. Further, it does not allege facts sufficient to state a plausible claim to relief. However, plaintiff will be given leave to amend his complaint.

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1           I.       Jurisdiction

2           Except where Congress otherwise dictates, a defendant may remove to federal court “any  
3 civil action brought in a State court of which the district courts of the United States have original  
4 jurisdiction . . .” 28 U.S.C. § 1441(a). Federal courts have original jurisdiction “of all civil  
5 actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.  
6 “If a case is improperly removed, the federal court must remand the action because it has no  
7 subject-matter jurisdiction to decide the case.” *ARCO Env'tl. Remediation, L.L.C. v. Department*  
8 *of Health & Env'tl. Quality*, 213 F.3d 1108, 1113 (9th Cir. 2000). Federal courts have an  
9 independent obligation to examine their own jurisdiction. *FW/PBS, Inc. v. City of Dallas*, 493  
10 U.S. 215 (1990).

11           Here, plaintiff has raised at least one federal claim. He alleges that defendants have  
12 interfered with his legal mail by opening it outside of his presence, delaying both its receipt and  
13 transmission, and sometimes preventing him from receiving his legal mail altogether. ECF No. 1-  
14 1 at 11. The U.S. Court of Appeals for the Ninth Circuit has recognized inmates’ First  
15 Amendment right to send and receive mail. *See Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir.  
16 1995). And more recently the Ninth Circuit has held that “prisoners have a protected First  
17 Amendment interest in having properly marked legal mail opened only in their presence.” *Hayes*  
18 *v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1211 (9th Cir. 2017). Consequently, the court concludes that  
19 it has jurisdiction over plaintiff’s claims. *See Ultramar America, Ltd. v. Dwelle*, 900 F.2d 1412,  
20 1413-1414 (9th Cir. 1990) (federal question jurisdiction exists if at least one claim in the  
21 complaint arises under federal law). In turn, it may exercise supplemental jurisdiction over  
22 plaintiff’s remaining state-law claims provided that they “are so related to claims in the action  
23 within such original jurisdiction that they form part of the same case or controversy under Article  
24 III of the United States Constitution.” 28 U.S.C. § 1367(a).

25           Having concluded that federal question jurisdiction exists, the court turns to screening of  
26 sufficiency of the allegations of the complaint.

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1           II.       Screening Requirements

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

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

15           “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
16 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
17 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.  
18 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).  
19 However, in order to survive dismissal for failure to state a claim, a complaint must contain more  
20 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
21 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations  
22 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that  
23 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)  
24 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1216 (3d  
25 ed. 2004)).

26           “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
27 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*  
28 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content

1 that allows the court to draw the reasonable inference that the defendant is liable for the  
2 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint  
3 under this standard, the court must accept as true the allegations of the complaint in question,  
4 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading  
5 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, *Jenkins v.*  
6 *McKeithen*, 395 U.S. 411, 421 (1969).

### 7 III. Screening Order

8 At the outset, the court notes that plaintiff’s complaint, despite having been removed from  
9 state court, is now subject to the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 81(c)(1)  
10 (“These rules apply to a civil action once it is removed from state court.”). The complaint, which  
11 encompasses thirty-three dense, hand-written pages, is difficult to parse. Plaintiff has not ordered  
12 his claims in a legible way, *i.e.* by organizing them into discrete sections which clearly identify  
13 how each defendant personally violated his rights. Instead, plaintiff devotes large sections of the  
14 complaint to oblique legal conclusions like “[e]ach [of the] defendants’ actions created a  
15 substantial risk of foreseeable (sic) harm, and dangerous conditions through personal lack of due  
16 care . . . .” ECF No. 1-1 at 11. Federal Rule of Civil Procedure 8(d)(1), requires that “each  
17 allegation must be simple, concise, and direct.” The allegations in the immediate complaint do  
18 not comply with this requirement and are so vague and conclusory that that a defendant could not  
19 reasonably be expected to frame a responsive pleading based on those allegations.

### 20 IV. Leave to Amend

21 Plaintiff may choose to amend his complaint. He is cautioned that any amended  
22 complaint must identify as a defendant only persons who personally participated in a substantial  
23 way in depriving him of his constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.  
24 1978) (a person subjects another to the deprivation of a constitutional right if he does an act,  
25 participates in another’s act or omits to perform an act he is legally required to do that causes the  
26 alleged deprivation). Plaintiff may also include any allegations based on state law that are so  
27 closely related to his federal allegations that “they form the same case or controversy.” *See* 28  
28 U.S.C. § 1367(a).

1 The amended complaint must also contain a caption including the names of all defendants.  
2 Fed. R. Civ. P. 10(a).

3 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*  
4 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Nor may he bring unrelated claims against  
5 multiple defendants. *Id.*

6 Any amended complaint must be written or typed so that it so that it is complete in itself  
7 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
8 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
9 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
10 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter  
11 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
12 1967)).

13 Any amended complaint should be as concise as possible in fulfilling the above  
14 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual  
15 background which has no bearing on his legal claims. He should also take pains to ensure that his  
16 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing  
17 and organization. Plaintiff should carefully consider whether each of the defendants he names  
18 actually had involvement in the constitutional violations he alleges. A “scattershot” approach in  
19 which plaintiff names dozens of defendants will not be looked upon favorably by the court.

20 V. Conclusion

21 Accordingly, it is ORDERED that the complaint is dismissed with leave to amend within  
22 30 days. The amended complaint must bear the docket number assigned to this case and be titled  
23 “Amended Complaint.” Failure to comply with this order may result in a recommendation that  
24 this action be dismissed for failure to prosecute.

25 Dated: June 14, 2018.

26   
27 EDMUND F. BRENNAN  
28 UNITED STATES MAGISTRATE JUDGE