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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH C. SISNEROS,
Plaintiff,
v.
K. MIM,
Defendant.

No. 2:17-cv-2361-TLN-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel. He originally brought this action in the Sacramento County Superior Court. ECF No. 1. Defendants removed the action to this court on November 13, 2017. *Id.* Attached to their notice of removal was a copy of plaintiff’s complaint. *Id.* at 4. Plaintiff is a state prisoner and, pursuant to 28 U.S.C. § 1915A, defendants now request, by separate motion, that the court screen his complaint and dismiss any claims that are frivolous, malicious, or which fail to state a cognizable claim. ECF No. 2. After reviewing plaintiff’s complaint, the court concludes that it states a potentially cognizable due process claim against the defendant.

Jurisdiction

Except where Congress otherwise dictates, a defendant may remove to federal court “any civil action brought in a State court of which the district courts of the United States have original jurisdiction . . .” 28 U.S.C. § 1441(a). Federal courts have original jurisdiction “of all civil

1 actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.
2 “If a case is improperly removed, the federal court must remand the action because it has no
3 subject-matter jurisdiction to decide the case.” *ARCO Envtl. Remediation, L.L.C. v. Department*
4 *of Health & Envtl. Quality*, 213 F.3d 1108, 1113 (9th Cir. 2000). Federal courts have an
5 independent obligation to examine their own jurisdiction. *FW/PBS, Inc. v. City of Dallas*, 493
6 U.S. 215 (1990).

7 Here, plaintiff has raised at least one federal claim. He alleges that defendant violated his
8 rights at a disciplinary hearing by: (1) failing to provide him with advance notice of the charges
9 against him; and (2) declining to allow him to present evidence in his defense. ECF No. 1 at 7-8.
10 The Supreme Court has held that inmates are entitled to: (1) advance written notice of the claimed
11 violation so that they can marshal facts and prepare a defense; (2) a brief period of time to prepare
12 for the disciplinary hearing; (3) an ability to call witnesses and present documentary evidence in
13 their defense so long as doing so will not be unduly hazardous to institutional safety or
14 correctional goals; (4) assistance where the issues are overly complex or the inmate is illiterate;
15 and (5) a written statement from the factfinder as to the evidence relied on and the reasons for the
16 disciplinary outcome. *See Wolff v. McDonnel*, 418 U.S. 539, 563-70 (1974). Consequently, the
17 court concludes that it has jurisdiction over plaintiff’s claims. *See Ultramar America, Ltd. v.*
18 *Dwelle*, 900 F.2d 1412, 1413-1414 (9th Cir. 1990) (federal question jurisdiction exists if at least
19 one claim in the complaint arises under federal law). In turn, it may exercise supplemental
20 jurisdiction over any state-law claims provided that they “are so related to claims in the action
21 within such original jurisdiction that they form part of the same case or controversy under Article
22 III of the United States Constitution.” 28 U.S.C. § 1367(a).

23 Having concluded that federal question jurisdiction exists, the court turns to the screening
24 of the complaint.

25 Screening Requirements

26 The court is required to screen complaints brought by prisoners seeking relief against a
27 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
28 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

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

11 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
12 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
13 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.
14 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).
15 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
16 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
17 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations
18 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
19 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)
20 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, 1216 (3d
21 ed. 2004)).

22 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
23 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
24 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content
25 that allows the court to draw the reasonable inference that the defendant is liable for the
26 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint
27 under this standard, the court must accept as true the allegations of the complaint in question,
28 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading

1 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor, *Jenkins v.*
2 *McKeithen*, 395 U.S. 411, 421 (1969).

3 Screening Order

4 Plaintiff alleges that defendant violated his due process rights at a prison disciplinary
5 hearing by failing to provide him with advance notice of the charges against him and declining to
6 allow him to present evidence in his defense. ECF No. 1 at 7-8. These allegations are sufficient
7 to pass muster on screening.

8 The court notes that plaintiff also alleges that the adverse disciplinary hearing outcome
9 "greatly enhanced" his negative medical conditions, including diabetes, hypertension, and
10 Hepatitis C. *Id.* at 8. It is unclear if plaintiff intends these allegations to state a separate claim for
11 deliberate indifference against the defendant or any other prison official. Regardless, plaintiff has
12 not sufficiently explained how the assessed disciplinary violation caused his medical symptoms to
13 worsen. Nor has he alleged that defendant acted with an understanding that the disciplinary
14 violation would negatively affect plaintiff's health. Accordingly this claim, to the extent plaintiff
15 seeks to raise it, is dismissed with leave to amend.

16 Leave to Amend

17 Plaintiff may choose to amend his complaint. He is cautioned that any amended
18 complaint must identify as a defendant only persons who personally participated in a substantial
19 way in depriving him of his constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.
20 1978) (a person subjects another to the deprivation of a constitutional right if he does an act,
21 participates in another's act or omits to perform an act he is legally required to do that causes the
22 alleged deprivation). Plaintiff may also include any allegations based on state law that are so
23 closely related to his federal allegations that "they form the same case or controversy." *See* 28
24 U.S.C. § 1367(a).

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

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

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

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

18 Defendant’s Request for Screening and Motion for Extension of Time

19 The court has screened plaintiff’s complaint and, consequently, defendant’s request for
20 screening is granted. Defendant also requests, that in the event any portion of the complaint
21 survives screening, he be afforded thirty days to file a response. ECF No. 2 at 1-2. As noted
22 above, plaintiff’s due process claim is suitable to proceed. It is unclear, however, if he will
23 amend his complaint to attempt to incorporate an Eighth Amendment deliberate indifference
24 claim. Accordingly, the court will direct plaintiff to, within thirty days, either submit an amended
25 complaint or written notice that he intends to proceed only with his due process claim. If plaintiff
26 submits an amended complaint, defendant will not be required to respond until the court has
27 screened it. Alternatively, if plaintiff submits notice of his intent to proceed only with his

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1 cognizable due process claim, defendant's response shall be due thirty days from the filing of that
2 notice.

3 Conclusion

4 Based on the foregoing it is ORDERED that:

5 1. Defendant's request for screening and motion for extension of time (ECF No. 2) is
6 GRANTED.

7 2. Plaintiff's complaint is sufficient to state a cognizable due process claim against
8 defendant Mim; all other claims are dismissed with leave to amend.

9 3. Within thirty days of this order's entry, plaintiff shall submit either: (1) an amended
10 complaint or (2) written notice of his intent to proceed only with his due process claim against
11 defendant Mim.

12 4. If plaintiff submits notice of intent to proceed only with his due process claim,
13 defendant's response to plaintiff's complaint shall be due thirty days from the date of the filing of
14 the notice.

15 5. Plaintiff is cautioned that failure to comply with this order may result in dismissal of
16 this action for failure to prosecute.

17 Dated: July 17, 2018.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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