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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH WAYNE ROBERSON,
Plaintiff,
v.
ALBERT SMITH, et al.,
Defendants.

No. 2:17-cv-2649 CKD P

ORDER

Plaintiff is a California 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). On May 3, 2018, the court screened plaintiff’s complaint, as the court is required to do under 28 U.S.C. § 1915(A), and dismissed plaintiff’s complaint with leave to amend. Plaintiff has now filed an amended complaint.

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

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1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 In order to avoid dismissal for failure to state a claim a complaint must contain more than
9 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
10 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
11 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
12 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
13 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
14 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
15 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
16 at 678. When considering whether a complaint states a claim upon which relief can be granted,
17 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and
18 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
19 U.S. 232, 236 (1974).

20 The court has reviewed plaintiff’s amended complaint and finds that it fails to state a
21 claim upon which relief can be granted under federal law. Plaintiff’s amended complaint must be
22 dismissed. The court will, however, grant plaintiff one final opportunity to state an actionable
23 claim in a second amended complaint.

24 In his first claim in his amended complaint, plaintiff blames certain defendants for the
25 presentation of fraudulent evidence at his criminal trial. Plaintiff seeks damages on this claim.
26 As plaintiff was informed in the court’s original screening order, claims brought in a 42 U.S.C. §
27 1983 action which imply the invalidity of a conviction or sentence which has not been overturned

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1 on appeal or through collateral proceedings are barred by Heck v. Humphrey, 512 U.S. 477,486-
2 87 (1994).

3 In his second claim, plaintiff asserts his First Amendment rights were violated when he
4 was denied certain mail at the Glenn County Jail. Exhibits attached to plaintiff's first amended
5 complaint indicate plaintiff sent certain court documents outside the jail for copying. ECF No. 18
6 at 28-31. The mail which was initially denied consists of the copies being sent back to plaintiff.
7 However, it appears the decision to deny plaintiff the copies was reversed through the jail
8 grievance process. ECF No. 18 at 28. Therefore, it is not clear what damage, if any, plaintiff
9 suffered as a result of his initially being denied mail.

10 More generally, plaintiff is informed that if he chooses to file a second amended
11 complaint, plaintiff must demonstrate how the conditions complained of have resulted in a
12 deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).
13 Also, in his amended complaint, plaintiff must allege in specific terms how each named defendant
14 is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative
15 link or connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode,
16 423 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official participation in
17 civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir.
18 1982).

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

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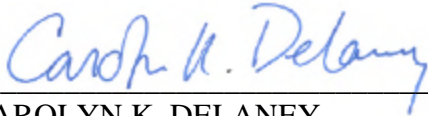
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In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's amended complaint is dismissed.
2. Plaintiff is granted thirty days from the date of service of this order to file a second amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The second amended complaint must bear the docket number assigned this case and must be labeled "Second Amended Complaint." Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: February 21, 2019



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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robe2649.14(2)