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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL JESUS ARZAGA,
Plaintiff,
v.
E. SANTIAGO, et al.,
Defendants.

No. 2:18-cv-0313 KJM KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 14, 2018, the undersigned recommended that this action be dismissed as legally frivolous. Plaintiff filed timely objections in which he argues that because his allegations remain “possible” they are not fanciful and should not be dismissed as legally frivolous. Plaintiff contends that he “re-grouped, and fixed his complaint,” and narrowed the parties and claims raised in the instant pleading, including not asking for a “crazy sum of money.” (ECF No. 14 at 2.) Plaintiff seeks \$1,200,000 in compensatory damages, and \$1,500,000 in punitive damages. (ECF No. 1 at 5.)

To make the determination under 28 U.S.C. § 1915(e)(2)(B), courts assess whether there is an arguable factual and legal basis for the asserted wrong, “however inartfully pleaded.”

1 Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Courts have the authority to
2 dismiss complaints founded on “wholly fanciful” factual allegations for lack of subject matter
3 jurisdiction. Id. at 1228. A court can also dismiss a complaint where it is based solely on
4 conclusory statements, naked assertions without any factual basis, or allegations that are not
5 plausible on their face. Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009); see also Erickson v.
6 Pardus, 551 U.S. 89 (2007) (per curiam).

7 Plaintiff is informed that even if his claims are “possible,” he is required, under Iqbal, to
8 show such allegations are plausible on their face. Upon reconsideration, and in an abundance of
9 caution, the findings and recommendations are vacated, and plaintiff is granted thirty days in
10 which to file an amended complaint. Plaintiff must explain how his allegations are factually
11 plausible in the prison setting at California Health Care Facility.

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. See, e.g.,
14 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how
15 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no
16 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
17 defendant’s actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633
18 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,
19 vague and conclusory allegations of official participation in civil rights violations are not
20 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 Ramirez
25 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“an ‘amended complaint
26 supersedes the original, the latter being treated thereafter as non-existent.’” (internal citation
27 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any
28 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim

1 and the involvement of each defendant must be sufficiently alleged.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. The findings and recommendations filed November 14, 2018 (ECF No. 11) are
4 vacated;

5 2. Plaintiff's complaint is dismissed;

6 3. Within thirty days from the date of this order, plaintiff shall complete the attached
7 Notice of Amendment and submit the following documents to the court:

8 a. The completed Notice of Amendment; and

9 b. An original and one copy of the Amended Complaint.

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

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

15 Dated: December 18, 2018

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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NOTICE OF AMENDMENT

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

DATED: _____ Amended Complaint

Plaintiff