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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMUEL ARCHULETA,
Plaintiff,
v.
MARTIN DEL CAMPO, et al.,
Defendants.

No. 2: 18-cv-0872 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. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

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

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
14 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
17 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
19 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
22 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
23 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
24 sufficient "to raise a right to relief above the speculative level." Id. at 555. However, "[s]pecific
25 facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what
26 the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93
27 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).
28 In reviewing a complaint under this standard, the court must accept as true the allegations of the

1 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most
2 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other
3 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 Named as defendants are Correctional Officers Del Campo and Simpson. Plaintiff alleges
5 that defendant Simpson started telling other inmates, for no reason, why plaintiff was “in here,”
6 which put plaintiff’s life in danger. Plaintiff alleges that he is not sure why defendant Simpson
7 did this, but it may have been because plaintiff filed administrative grievances.

8 The undersigned construes plaintiff’s complaint to allege an Eighth Amendment claim and
9 a retaliation claim.

10 With respect to the Eighth Amendment claim, plaintiff does not specifically allege what
11 defendant Simpson told other inmates about plaintiff. It is not clear, for example, if plaintiff is
12 claiming that defendant Simpson disclosed confidential information regarding plaintiff’s
13 conviction to other inmates. Without this information, the undersigned cannot determine whether
14 plaintiff has stated a potentially colorable Eighth Amendment claim against defendant Simpson.
15 Accordingly, this claim is dismissed with leave to amend. If plaintiff files an amended complaint,
16 he must specifically describe the information defendant Simpson gave to other inmates regarding
17 plaintiff. Plaintiff shall also address how he knows defendant Simpson allegedly disclosed this
18 information to other inmates. Plaintiff shall also address whether he was threatened or otherwise
19 injured based on the alleged disclosure of the information.

20 Plaintiff alleges that defendant Simpson disclosed the information regarding plaintiff to
21 other inmates possibly in retaliation for plaintiff filing grievances. “Within the prison context, a
22 viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a
23 state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected
24 conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and
25 (5) the action did not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson,
26 408 F.3d 559, 567-68 (9th Cir. 2005).

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1 Plaintiff alleges that he does not know why defendant Simpson allegedly gave other
2 inmates information regarding him. Plaintiff speculates that it may have been because he filed
3 grievances. Plaintiff's vague speculation is not sufficient to state a potentially colorable
4 retaliation claim against defendant Simpson. In addition, plaintiff does not allege that defendant
5 Simpson had knowledge of the grievances he allegedly filed. For these reasons, plaintiff has not
6 stated a potentially colorable retaliation claim against defendant Simpson.

7 The complaint contains no allegations against defendant Del Campo. The Civil Rights
8 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.

15 The statute requires that there be an actual connection or link between the actions of the
16 defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v.
17 Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not intend § 1983 liability to
18 attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976) (no affirmative
19 link between the incidents of police misconduct and the adoption of any plan or policy
20 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another
21 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an
22 affirmative act, participates in another’s affirmative acts or omits to perform an act which he is
23 legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy,
24 588 F.2d 740, 743 (9th Cir. 1978).

25 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
26 their employees under a theory of respondeat superior and, therefore, when a named defendant
27 holds a supervisory position, the causal link between him and the claimed constitutional
28 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
(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.

1 denied, 442 U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of
2 official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673
3 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal
4 participation is insufficient).

5 Defendant Del Campo is dismissed because plaintiff has failed to link him to any of the
6 alleged deprivations.

7 If plaintiff chooses to amend the complaint, plaintiff is informed that the court cannot
8 refer to a prior pleading in order to make plaintiff's amended complaint complete. Local Rule
9 220 requires that an amended complaint be complete in itself without reference to any prior
10 pleading. This requirement exists because, as a general rule, an amended complaint supersedes
11 the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an
12 amended complaint, the original pleading no longer serves any function in the case. Therefore, in
13 an amended complaint, as in an original complaint, each claim and the involvement of each
14 defendant must be sufficiently alleged.

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

16 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

17 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
18 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
19 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
20 Director of the California Department of Corrections and Rehabilitation filed concurrently
21 herewith.

22 3. Plaintiff's complaint is dismissed.

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

25 a. The completed Notice of Amendment; and

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

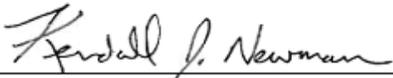
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1 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
2 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
3 also bear the docket number assigned to this case and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

4 Failure to file an amended complaint in accordance with this order may result in the
5 dismissal of this action.

6 Dated: April 13, 2018

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9 KENDALL J. NEWMAN
10 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