

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON JEREL WILLIAMS,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,

Defendants.

No. 2:21-cv-1559 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. By order filed October 17, 2023, plaintiff’s complaint was screened and he was given the option of amending the complaint or proceeding immediately on cognizable claims only. ECF No. 6. Plaintiff has now filed a first amended complaint. ECF No. 9.

I. Statutory Screening of Prisoner Complaints

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 “frivolous, malicious, or 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 A claim “is [legally] frivolous where 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). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal  
4 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,  
5 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as  
6 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a  
7 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.  
8 Franklin, 745 F.2d at 1227-28 (citations omitted).

9 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
10 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
11 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550  
12 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
13 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context  
14 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,  
15 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure  
16 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a  
17 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the  
18 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain  
19 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally  
20 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur  
21 R. Miller, Federal Practice and Procedure § 1216 (3d 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  
24 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
25 content that allows the court to draw the reasonable inference that the defendant is liable for the  
26 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this  
27 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.  
28 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the

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

3 II. First Amended Complaint

4 The first amended complaint alleges that defendants Lizarraga, Covello, Kernan, Diaz,  
5 Toche, Gipson, Bettencourt, Ahmed, Larrabee, Hold, and Altevost violated plaintiff's rights  
6 under the Eighth Amendment. ECF No. 9. Plaintiff alleges that the water provided at Mule  
7 Creek State Prison (MCSP) for drinking and bathing is contaminated and that the named  
8 defendants are all supervisors with a statutory and regulatory responsibility for management of  
9 the prison and that they failed to provide warnings or disclosures about the water contamination.  
10 Id. at 1, 7-8. As a result of the contaminated water, plaintiff has suffered from constant diarrhea,  
11 headaches, abdominal pains, gastroesophageal reflux disease, irritable bowel syndrome, and  
12 infection with *H. pylori*. Id. at 12. He further appears to allege that defendants have violated  
13 various state statutes and regulations as well as the Clean Water Act (CWA) and Safe Drinking  
14 Water Act (SDWA). Id. at 7-11.

15 III. Failure to State a Claim

16 The complaint fails to state a claim against any defendant because plaintiff makes only  
17 conclusory allegations that the water at MCSP is contaminated and that, as supervisors,  
18 defendants are all liable. "There is no respondeat superior liability under section 1983," Taylor v.  
19 List, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted), and the complaint provides no  
20 specifics regarding the water contamination or any defendants' involvement in causing or failing  
21 to address the contamination, see Cousins v. Lockyer, 568 F.3d 1063, 1067 (9th Cir. 2009)  
22 ("'[C]onclusory allegations of law and unwarranted inferences are insufficient' to avoid a Rule  
23 12(b)(6) dismissal"); Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) ("Liability under  
24 § 1983 must be based on the personal involvement of the defendant." (citing May v. Enomoto,  
25 633 F.2d 164, 167 (9th Cir. 1980))). Furthermore, to the extent plaintiff is attempting to bring  
26 state tort law claims or claims under the CWA and SDWA, he has failed to allege compliance  
27 with the applicable notice statutes. See State v. Superior Court (Bodde), 32 Cal. 4th 1234, 1240,  
28 1237 (2004) (for claims against the state, timely presentation of a claim under the Government

1 Claims Act is an element of the cause of action and must be pled in the complaint); Cal. Gov't  
2 Code § 900.6 (defining "State" as "the State and any office, officer, department, division, bureau,  
3 board, commission or agency of the State claims against which are paid by warrants drawn by the  
4 Controller"); Ctr. for Biological Diversity v. Marina Point Dev. Co., 566 F.3d 794, 800 (9th Cir.  
5 2009) (providing sixty-day notice required by Clean Water Act is "a jurisdictional necessity"  
6 (citations omitted)); Curtis v. City of Bullhead, 69 F. App'x 377 (9th Cir. 2003) (noting SDWA  
7 and CWA have identical notice requirements and holding district court correctly concluded it  
8 lacked subject matter jurisdiction where there was not adequate notice under Clean Water Act and  
9 Safe Drinking Water Act). For these reasons, the first amended complaint fails to state a claim  
10 for relief.

11 IV. Leave to Amend

12 The complaint does not state any cognizable claims for relief and plaintiff will be given an  
13 opportunity to file an amended complaint. If plaintiff chooses to file an amended complaint, he  
14 must demonstrate how the conditions about which he complains resulted in a deprivation of his  
15 constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). The complaint must also  
16 allege in specific terms how each named defendant is involved. Arnold v. Int'l Bus. Machs.  
17 Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983  
18 unless there is some affirmative link or connection between a defendant's actions and the claimed  
19 deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and  
20 conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v.  
21 Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

22 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make  
23 his amended complaint complete. Local Rule 220 requires that an amended complaint be  
24 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
25 amended complaint supersedes any prior complaints. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
26 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th  
27 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled  
28 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,

1 any previous complaints no longer serve any function in the case. Therefore, in an amended  
2 complaint, as in an original complaint, each claim and the involvement of each defendant must be  
3 sufficiently alleged.

4 V. Plain Language Summary of this Order for a Pro Se Litigant

5 Your complaint will not be served because the facts you alleged are not enough to state a  
6 claim. You have not alleged any facts regarding the defendants' own actions. The fact that they  
7 are supervisors or have a duty under state law to manage the water is not enough to state a claim  
8 against them under § 1983. They must have personally participated in the violation. You also  
9 have not alleged that you complied with the notice of claim statutes for state tort law claims or  
10 claims under the Clean Water Act and Safe Drinking Water Act.

11 You may amend your complaint to try to fix these problems. Be sure to provide facts that  
12 show exactly what each defendant did to violate your rights or to cause a violation of your rights.

13 If you choose to file an amended complaint, it must include all claims you want to bring.  
14 Once an amended complaint is filed, the court will not look at any information in your previous  
15 complaints. **Any claims and information not in the amended complaint will not be**  
16 **considered.**

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

18 1. The first amended complaint fails to state a claim upon which relief may be granted,  
19 see 28 U.S.C. § 1915A, and will not be served.

20 2. Within thirty days from the date of service of this order, plaintiff may file an amended  
21 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
22 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket  
23 number assigned this case and must be labeled "Second Amended Complaint." Failure to file an  
24 amended complaint in accordance with this order will result in a recommendation that this action  
25 be dismissed.

26 ///

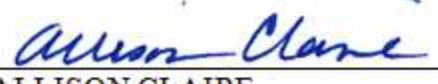
27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form used in this district.

DATED: November 9, 2023

  
\_\_\_\_\_  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE