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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES MICHAEL FAYED,
Plaintiff,
v.
KATHLEEN ALLISON,
Defendant.

No. 2:21-cv-02041 DB P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that defendants violated his due process rights when they took restitution payments from his account. Before the court is plaintiff’s Second Amended Complaint (“SAC”) for screening. (ECF No. 29.) For the reasons stated below, the SAC will be dismissed with leave to amend.

SCREENING

I. Legal Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 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

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1 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
2 U.S.C. § 1915A(b)(1) & (2).

3 A claim is legally frivolous when 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). The court may, therefore, dismiss a claim as frivolous where it is based on an
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
7 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
8 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227. Rule 8(a)(2) of
9 the Federal Rules of Civil Procedure “requires only ‘a short and plain statement of the claim
10 showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what
11 the . . . claim is and the grounds upon which it rests.’” Bell Atlantic Corp. v. Twombly, 550 U.S.
12 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

13 However, in order to survive dismissal for failure to state a claim a complaint must
14 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain
15 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,
16 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
17 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
18 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all
19 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

20 The Civil Rights Act under which this action was filed provides as follows:

21 Every person who, under color of [state law] . . . subjects, or causes
22 to be subjected, any citizen of the United States . . . to the deprivation
23 of any rights, privileges, or immunities secured by the Constitution .
. . shall be liable to the party injured in an action at law, suit in equity,
or other proper proceeding for redress.

24 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
25 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
26 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). “A
27 person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of §
28 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform

1 an act which he is legally required to do that causes the deprivation of which complaint is made.”
2 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

3 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
4 their employees under a theory of respondeat superior and, therefore, when a named defendant
5 holds a supervisory position, the causal link between him and the claimed constitutional
6 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
7 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations
8 concerning the involvement of official personnel in civil rights violations are not sufficient. See
9 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

10 **II. Linkage Requirement**

11 Under Section 1983, a plaintiff bringing an individual capacity claim must demonstrate
12 that each defendant personally participated in the deprivation of his rights. See Jones v.
13 Williams, 297 F.3d 930, 934 (9th Cir. 2002). There must be an actual connection or link between
14 the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
15 Ortez v. Washington County, State of Oregon, 88 F.3d 804, 809 (9th Cir. 1996); see also Taylor
16 v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

17 Government officials may not be held liable for the actions of their subordinates under a
18 theory of respondeat superior. Iqbal, 556 U.S. at 676 (stating vicarious liability is inapplicable in
19 Section 1983 suits). Since a government official cannot be held liable under a theory of vicarious
20 liability in Section 1983 actions, plaintiff must plead sufficient facts showing that the official has
21 violated the Constitution through his own individual actions by linking each named defendant
22 with some affirmative act or omission that demonstrates a violation of plaintiff's federal rights.
23 Id. at 676.

24 **III. Allegations in the SAC**

25 In the SAC, plaintiff names as defendants: California Department of Corrections and
26 Rehabilitation (“CDCR”), CDCR Secretary Kathleen Allison, the California Attorney General,
27 the County of Los Angeles, and California Governor Gavin Newsom. (ECF No. 29 at 1-2.)

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1 Plaintiff claims he was subject to restitution fund deductions despite actively appealing his
2 verdict. (Id. at 10.) Plaintiff argues that this violates his Fourth and Fourteenth Amendment
3 rights as it is an authorized intentional taking of his property that is prohibited by state law. (Id.)
4 Plaintiff also alleges he was subject to an increase in the monthly amount deducted from his
5 inmate trust account for restitution as a result of California Proposition 66. (Id. at 7.) Plaintiff
6 claims that this violates his rights as breaches the Ex Post Facto Clause. (Id. at 9.)

7 Plaintiff seeks injunctive relief “striking down the provisions of ‘Proposition-66’ that
8 violate Federal Constitutional protection” and returning “funds illegally deducted in error from
9 plaintiff’s trust fund account” both due to the increase in restitution and while plaintiff was
10 engaged in a direct appeal of his conviction. (Id. at 14-15.) Plaintiff also seeks compensatory
11 and punitive damages for violating plaintiff’s civil rights. (Id. at 18-19.)

12 **IV. Does Plaintiff State a § 1983 Claim?**

13 The claims in the SAC focus on two distinct issues. The first is that plaintiff believes his
14 Fourth and Fourteenth Amendment rights were violated when restitution was taken from his
15 inmate trust account while he was in the process of appealing his conviction. (ECF No. 29 at 10.)
16 In the second claim, plaintiff argues his rights under the Fourth and Fourteenth Amendments were
17 violated as Proposition 66 breached the Ex Post Facto Clause by increasing the rate at which
18 restitution money was taken from plaintiff’s inmate trust account. (Id. at 10.)

19 As to the first of these claims, plaintiff alleges that defendants intentionally took
20 restitution money from his inmate trust account as authorized by California Department of
21 Corrections and Rehabilitation (“CDCR”) policy. (Id. at 10.) Plaintiff claims that this restitution
22 was unlawfully taken as California Penal Code 1243 required that the execution of the judgment
23 be stayed pending completion of his appeals. (Id.) However, the SAC fails to establish that the
24 defendants personally participated in the deprivation of plaintiff’s constitutional rights. See
25 Jones, 297 F.3d at 934; Iqbal, 556 U.S. at 676. Though there are a number of defendants included
26 in the SAC, plaintiff simply states that defendants should be liable as they “knew (or) should have
27 known” plaintiff’s rights were violated. (ECF No. 29 at 7.) Such broad allegations are vague and
28 conclusory and thus cannot satisfy the linkage requirement. See Ivey, 673 F.2d at 268. The only

1 allegation specific to a defendant is that defendant Allison, as secretary of the CDCR, is liable as
2 defendant Allison had responsibility for the supervision, management, and control of CDCR.
3 (ECF No. 29 at 5.) This allegation is insufficient to state a claim as it too is overly vague and
4 improperly suggests defendant Allison is liable for the actions of subordinates under a theory of
5 respondeat superior. Iqbal, 556 U.S. at 676. Thus, plaintiff has failed to allege sufficient facts to
6 state a cognizable claim against the named defendants.

7 Plaintiff may still be able to state a claim related to the removal of restitution funds while
8 undergoing appeal. As such, plaintiff will be granted leave to file an amended complaint.

9 As to plaintiff's second claim regarding the increase in monthly restitution money taken,
10 the Ninth Circuit has previously rejected that a statutory increase in the rate of restitution
11 payments violates the Ex Post Facto Clause. Quarles v. Kane, 482 F.3d 1154, 1155 (9th Cir.
12 2007) (citing Russell v. Gregoire, 124 F.3d 1079, 1085 (9th Cir. 1997)). An increase to the rate at
13 which restitution may be collected is not an additional punishment and thus does not violate the
14 Ex Post Facto Clause. Id. As such, plaintiff's claim regarding the increase in the rate of his
15 restitution payments due to Proposition 66 is not a cognizable claim.¹

16 AMENDING THE COMPLAINT

17 This court finds above that plaintiff has failed to allege sufficient facts to state a
18 cognizable claim under § 1983. Plaintiff will be given the opportunity to file an amended
19 complaint.

20 If plaintiff chooses to file an amended complaint, he must address the problems with his
21 complaint that are explained above. Any amended complaint must be complete in itself. The
22 court cannot refer to a prior complaint to understand the plaintiff's claims.

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¹ Though he does not say so clearly, the SAC suggests plaintiff may also wish to bring an equal protection claim based on the fact that only prisoners sentenced to the death penalty were subject to the increase in restitution. (See ECF No. 29 at 9) (“[L]eaving the 55% deduction unchanged for the rest of the state prison population, qualifies as discriminatory practice—unequal enforcement of law.”) To the extent plaintiff seeks to bring a Fourteenth Amendment equal protection claim in the SAC, this claim is not cognizable as plaintiff has not shown that he is a member of a protected class or that he was treated differently from similarly situated inmates. See Hartmann v. Calif. Dept. of Corrs. and Rehab., 707 F.3d 1114, 1123 (9th Cir. 2013); Engquist v. Oregon Dept. of Agriculture, 553 U.S. 591, 601–02 (2008).

1 In an amended complaint plaintiff must clearly identify each defendant and the action that
2 defendant took that violated plaintiff's constitutional rights. The court is not required to review
3 exhibits to determine what plaintiff's charging allegations are as to each named defendant. If
4 plaintiff wishes to add a claim, he must include it in the body of the complaint. The charging
5 allegations must be set forth in the amended complaint, so defendants have fair notice of the
6 claims plaintiff is presenting. That said, plaintiff need not provide every detailed fact in support
7 of his claims. Rather, plaintiff should provide a short, plain statement of each claim. See Fed. R.
8 Civ. P. 8(a).

9 Any amended complaint must show the federal court has jurisdiction, the action is brought
10 in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must
11 contain a request for particular relief. Plaintiff must identify as a defendant only persons who
12 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.
13 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (stating that a person subjects another to the
14 deprivation of a constitutional right if he does an act, participates in another's act, or omits to
15 perform an act he is legally required to do that causes the alleged deprivation). "Vague and
16 conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v.
17 Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

18 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.
19 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed.
20 R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
21 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

22 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d
23 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any
24 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.
25 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be
26 set forth in short and plain terms. See Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002)
27 ("Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus
28 litigation on the merits of a claim."); Fed. R. Civ. P. 8.


1 An amended complaint must be complete in itself, without reference to any prior pleading.
2 E.D. Cal. R. 220. Once plaintiff files an amended complaint, the original pleading is superseded.
3 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and has
4 evidentiary support for his allegations, and for violation of this rule, the court may impose
5 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

6 **CONCLUSION**

7 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

- 8 1. Plaintiff's Second Amended Complaint (ECF No. 29) is dismissed with leave to amend
9 as it fails to state a cognizable claim.
- 10 2. Plaintiff is granted thirty days from the date of service of this order to file an amended
11 complaint. The amended complaint must bear the docket number assigned to this case
12 and must be labeled "Third Amended Complaint."
- 13 3. Failure to comply with this order will result in a recommendation that this action be
14 dismissed.

15 Dated: January 19, 2023

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17 _____
18 DEBORAH BARNES
19 UNITED STATES MAGISTRATE JUDGE

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