

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

CHRISTOPHER ELLIOTT,  
Plaintiff,  
v.  
R. EHLERS, et al.,  
Defendants.

No. 2:22-cv-1040 KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and is proceeding in forma pauperis. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302. Plaintiff’s amended complaint is now before the court.

As discussed below, plaintiff’s amended complaint is dismissed with leave to amend.

Screening Standards

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 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).

///

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 when 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7 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
8 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
9 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at  
10 1227.

11 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain  
12 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
13 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
14 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
15 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a  
16 formulaic recitation of the elements of a cause of action;” it must contain factual allegations  
17 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555.  
18 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the  
19 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v.  
20 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal  
21 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as  
22 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the  
23 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236  
24 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

#### 25 Incomplete Pleading Form

26 Plaintiff’s amended complaint is defective because it does not bear plaintiff’s signature,  
27 does not specify the relief he seeks, and does not clearly set forth the injuries he claims resulted  
28 from defendant’s actions. Therefore, plaintiff is required to re-file his amended complaint using

1 the court’s form so that he can ensure such information is provided, and so that he can clearly  
2 identify each claim he raises against defendant Ehlers. Plaintiff may append his handwritten  
3 pages explaining the discrepancies in the subsequent reports, as discussed below.

4 Excessive Force

5 It appears plaintiff is able to state a potentially cognizable excessive force claim against  
6 defendant R. Ehlers. However, plaintiff articulates his claims by pointing out discrepancies in  
7 defendant Ehlers’ report, as well as the report by Officer Simmons, an alleged witness. On the  
8 amended complaint form, plaintiff should simply set forth the facts he contends demonstrates  
9 defendant Ehlers used excessive force against plaintiff, by addressing each element of an Eighth  
10 Amendment claim, as set forth below:

11 “[W]henver prison officials stand accused of using excessive physical force in violation  
12 of the [Eighth Amendment], the core judicial inquiry is . . . whether force was applied in a good-  
13 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.”

14 Hudson v. McMillian, 503 U.S. 1, 6-7 (1992) (citing Whitley v. Albers, 475 U.S. 312 (1986)).

15 When determining whether the force was excessive, we look to the “extent of the injury. . . , the  
16 need for application of force, the relationship between that need and the amount of force used, the  
17 threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to temper the  
18 severity of a forceful response.’” Hudson, 503 U.S. at 7 (citing Whitley, 475 U.S. at 321). While  
19 de minimis uses of physical force generally do not implicate the Eighth Amendment, significant  
20 injury need not be evident in the context of an excessive force claim, because “[w]hen prison  
21 officials maliciously and sadistically use force to cause harm, contemporary standards of decency  
22 always are violated.” Hudson, at 9 (citing Whitley, at 327).

23 Retaliation

24 Plaintiff’s retaliation claims are too vague and conclusory for the court to determine  
25 whether plaintiff can state cognizable retaliation claims against defendant Ehlers. For example,  
26 while plaintiff claims defendant started using retaliation by not sending out plaintiff’s mail to his  
27 family. But plaintiff does not provide dates that would indicate that defendant interfered with  
28 plaintiff’s mail because plaintiff filed a grievance against Ehlers. It is also unclear whether

1 plaintiff is raising only one claim of retaliation or two claims. Using the court’s form to  
2 separately address each claim will assist the court and defendant in addressing plaintiff’s claims.

3 Plaintiff is again provided the following standards that govern retaliation causes of action.  
4 It is well-established that prisoners have a First Amendment right to file prison grievances and  
5 that retaliation against prisoners for their exercise of this right is a constitutional violation.  
6 Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009). “Within the prison context, a viable claim  
7 of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took  
8 some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and  
9 that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action  
10 did not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559,  
11 567-68 (9th Cir. 2005) (footnote and citations omitted). To prevail on a retaliation claim, a  
12 plaintiff may “assert an injury no more tangible than a chilling effect on First Amendment rights.”  
13 Brodheim, 584 F.3d at 1269-70. Furthermore, “a plaintiff does not have to show that ‘his speech  
14 was actually inhibited or suppressed,’ but rather that the adverse action at issue ‘would chill or  
15 silence a person of ordinary firmness from future First Amendment activities.’” Id. at 1271  
16 (citing Rhodes, 408 F.3d at 568-69).

17 Nevertheless, First Amendment retaliation is not established simply by showing adverse  
18 activity by a defendant after protected speech; rather, the plaintiff must show a nexus between the  
19 two. See Huskey v. City of San Jose, 204 F.3d 893, 899 (9th Cir. 2000) (retaliation claim cannot  
20 rest on the “logical fallacy of post hoc, ergo propter hoc, literally, “after this, therefore because of  
21 this.””). The plaintiff must allege specific facts demonstrating that the plaintiff’s protected  
22 conduct was “the ‘substantial’ or ‘motivating’ factor behind the defendant’s conduct.” Brodheim,  
23 584 F.3d at 1271 (quoting Soranno’s Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir.  
24 1989)).

#### 25 Leave to Amend

26 As discussed above, plaintiff’s amended complaint must be dismissed. The court,  
27 however, grants leave to file an amended complaint as to his claims against defendant Ehlers  
28 only. If plaintiff chooses to file a second amended complaint, plaintiff must demonstrate how the

1 conditions complained of have resulted in a deprivation of plaintiff's federal constitutional or  
2 statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the second amended  
3 complaint must allege in specific terms how the named defendant is involved. There can be no  
4 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a  
5 defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v.  
6 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
7 1978). Furthermore, vague and conclusory allegations of official participation in civil rights  
8 violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

9 An amended complaint must be complete in itself without reference to any prior pleading.  
10 Local Rule 220; See Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015)  
11 ("an 'amended complaint supersedes the original, the latter being treated thereafter as non-  
12 existent.'" (internal citation omitted)). Once plaintiff files an amended complaint, the original or  
13 prior pleading is superseded.

14 Plaintiff is required to file his second amended complaint on the court's form. Plaintiff  
15 may, however, append the handwritten pages from his amended complaint (ECF No. 10 at 2-5) to  
16 add his contentions concerning the discrepancies in defendant's subsequent report concerning the  
17 use of force incident. Plaintiff is not required to submit exhibits but may request that the court  
18 attach his previously-submitted exhibits to his second amended complaint.

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

20 1. Plaintiff's amended complaint is dismissed.

21 2. Plaintiff is granted thirty days from the date of service of this order to file a second  
22 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
23 of Civil Procedure, and the Local Rules of Practice; the second amended complaint must be filed  
24 on the court's form and bear the docket number assigned this case and must be labeled "Second  
25 Amended Complaint."

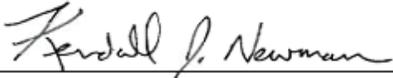
26 Failure to file a second amended complaint in accordance with this order will result in a  
27 recommendation that this action be dismissed.

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 the form for filing a civil rights complaint by a prisoner, and a copy of plaintiff's amended complaint (ECF No. 10).

Dated: November 18, 2022

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

/elli1040.14amd