

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Ronald Mitchell v. California Department of Corrections and
Rehabilitation, et al.**

Mitchell v. CDCR · No. 2:22-cv-2232 CKD P · Decided March 8, 2023

OPINION

(PC) Mitchell v. CDCR

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 RONALD MITCHELL, No. 2:22-cv-2232 CKD P

12 Plaintiff, 13 v. ORDER

14 CALIFORNIA DEPARTMENT OF

CORRECTIONS AND

15 REHABILITATION, et al., 16 Defendants. 17 18 Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 19 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 20 636(b)(1). 21 Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a 22 declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. 23 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 24 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the 25 initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. 26 Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding 27 month's income credited to plaintiff's prison trust account. These payments will be forwarded by 28 //// 1 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account 2 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). 3 Plaintiff requests that the court appoint counsel. District courts lack authority to require 4 counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. 5 Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney 6 to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 7 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). 8 When determining whether "exceptional circumstances" exist, the court must consider plaintiff's 9 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro 10 se in light of the complexity of the legal issues involved. *Palmer v.*

Valdez, 560 F.3d 965, 970 11 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The 12 burden of demonstrating exceptional circumstances is on the plaintiff. *Id.* Circumstances 13 common to most prisoners, such as lack of legal education and limited law library access, do not 14 establish exceptional circumstances that warrant a request for voluntary assistance of counsel. 15 Having considered the factors under *Palmer*, the court finds that plaintiff has failed to 16 meet his burden of demonstrating exceptional circumstances warranting the appointment of 17 counsel at this time. 18 The court is required to screen complaints brought by prisoners seeking relief against a 19 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The 20 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally 21 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek 22 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). 23 The court screens the amended complaint filed by plaintiff on December 27, 2022. 24 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. 25 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th

26 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an 27 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 28 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully 1 pleaded, has an arguable legal and factual basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th

2 Cir. 1989); *Franklin*, 745 F.2d at 1227.

3 In order to avoid dismissal for failure to state a claim a complaint must contain more than 4 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause 5 of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007). In other words, 6 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 7 statements do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Furthermore, a claim 8 upon which the court can grant relief has facial plausibility. *Twombly*, 550 U.S. at 570. “A 9 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw 10 the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. 11 at 678. When considering whether a complaint states a claim upon which relief can be granted, 12 the court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007), and 13 construe the complaint in the light most favorable to the plaintiff, see *Scheuer v. Rhodes*, 416 14 U.S. 232, 236 (1974). 15 The court has reviewed plaintiff’s amended complaint and finds that it fails to state a 16 claim upon which relief can be granted under federal law. Plaintiff’s amended complaint must be 17 dismissed. The court will, however, grant leave to file a second amended complaint. 18 If plaintiff chooses to amend again, plaintiff must demonstrate how the conditions 19 complained of have resulted in a deprivation of plaintiff’s federal rights. See *Ellis v. Cassidy*, 20 625 F.2d 227 (9th Cir. 1980). Also, in his second amended complaint, plaintiff must allege in

21 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C. 22 § 1983 unless there is some affirmative link or connection between a defendant's actions and the 23 claimed deprivation. *Rizzo v. Goode*, 423 U.S. 362 (1976). Furthermore, vague and conclusory 24 allegations of official participation in civil rights violations are not sufficient. *Ivey v. Board of 25 Regents*, 673 F.2d 266, 268 (9th Cir. 1982). 26 Plaintiff complains about the loss of property. The United States Supreme Court has held 27 that "an unauthorized intentional deprivation of property by a state employee does not constitute a 28 violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment 1 if a meaningful postdeprivation remedy for the loss is available." *Hudson v. Palmer*, 468 U.S. 2 517, 533 (1984). Thus, where the state provides a meaningful postdeprivation remedy, only 3 authorized, intentional deprivations constitute actionable violations of the Due Process Clause. 4 An authorized deprivation is one carried out pursuant to established state procedures, regulations, 5 or statutes. *Piatt v. McDougall*, 773 F.2d 1032, 1036 (9th Cir. 1985); see also *Knudson v. City of 6 Ellensburg*, 832 F.2d 1142, 1149 (9th Cir. 1987). Here, plaintiff has not alleged any facts which 7 suggest that the deprivation was authorized. The California Legislature has provided a remedy 8 for tort claims against public officials in the California Government Code, §§ 900, et seq. 9 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to 10 make plaintiff's second amended complaint complete. Local Rule 220 requires that any amended 11 complaint be complete in itself without reference to any prior pleading. This is because, as a 12 general rule, an amended complaint supersedes the original complaint. See *Loux v. Rhay*, 375 13 F.2d 55, 57 (9th Cir. 1967). 14 In accordance with the above, IT IS HEREBY ORDERED that: 15 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted. 16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees 17 shall be collected and paid in accordance with this court's order to the Director of the California 18 Department of Corrections and Rehabilitation filed concurrently herewith. 19 3. Plaintiff's motion for the appointment of counsel is denied. 20 4. Plaintiff's amended complaint is dismissed. 21 5. 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 bear 24 the docket number assigned this case and must be labeled "Second Amended Complaint." Failure 25

//// 26 //// 27 //// 28 //// 1 || to file a second amended complaint in accordance with this order will result in a recommendation 2 | that this action be dismissed. 3 | Dated: March 7, 2023 Card ft 4 by ae

4 CAROLYN K.DELANEY

5 UNITED STATES MAGISTRATE JUDGE

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