

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Avila v. United States Marshals, et al.

Avila · No. 2:23-cv-0136 CKD P · Decided March 2, 2023

OPINION

(PC) Avila v. U.S. Marshals

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 NEHEMIAH AVILA, No. 2:23-cv-0136 CKD P

12 Plaintiff, 13 v. ORDER 14 UNITED STATES MARSHALS, et al., 15 Defendants. 16 17
Plaintiff is a Sacramento County Jail prisoner proceeding pro se and seeking relief 18 pursuant to
42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 19 pursuant to 28
U.S.C. § 636(b)(1). 20 Plaintiff requests leave to proceed in forma pauperis. As plaintiff has
submitted a 21 declaration that makes the showing required by 28 U.S.C. § 1915(a), his request
will be granted. 22 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28
U.S.C. §§ 23 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency
to collect the 24 initial partial filing fee from plaintiff's trust account and forward it to the Clerk of
the Court. 25 Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the
preceding 26 month's income credited to plaintiff's prison trust account. These payments will be
forwarded by 27 the appropriate agency to the Clerk of the Court each time the amount in
plaintiff's account 28 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). 1
The court is required to screen complaints brought by prisoners seeking relief against a 2
governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The 3
court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. 7 Neitzke v.
Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
8 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
10 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully 11
pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th

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

13 In order to avoid dismissal for failure to state a claim a complaint must contain more than 14
“naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
15 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, 16
“[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 17
statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim 18
upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A 19
claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
20 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556
U.S. 21 at 678. When considering whether a complaint states a claim upon which relief can be
granted, 22 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94
(2007), and 23 construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
Rhodes, 416 24 U.S. 232, 236 (1974). 25 The court has reviewed plaintiff’s complaint and finds
that it fails to state a claim upon 26 which relief can be granted under federal law. Plaintiff’s
complaint must be dismissed. The 27 court will, however, grant leave to file an amended
complaint. 28 // 1 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how
the conditions 2 complained of have resulted in a deprivation of plaintiff’s constitutional rights.
See Ellis v. 3 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must
allege in 4 specific terms how each named defendant is involved. There can be no liability under
42 U.S.C. 5 § 1983 unless there is some affirmative link or connection between a defendant’s
actions and the 6 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague
and conclusory 7 allegations of official participation in civil rights violations are not sufficient.
Ivey v. Board of 8 Regents, 673 F.2d 266, 268 (9th Cir. 1982). 9 With respect to defendants
Nevada and Sacramento County Sheriffs, plaintiff is informed 10 that municipalities cannot be
held vicariously liable under § 1983 for the actions of their 11 employees. Monell v. Dep’t of
Social Services, 436 U.S. 585 at 691, 694 (1978). “Instead, it is 12 when execution of a
government’s policy or custom, whether made by its lawmakers or by those 13 whose edicts or
acts may fairly be said to represent official policy, inflicts the injury that the 14 government as an
entity is responsible under § 1983.” Id. at 694. 15 Plaintiff is advised that under 42 U.S.C. §
1997e(a) “[n]o action shall be brought with 16 respect to prison conditions under section 1983 of
this title, or any other Federal law, by a 17 prisoner confined in any jail, prison, or other
correctional facility until such administrative 18 remedies as are available are exhausted.” 19
Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to 20 make
plaintiff’s amended complaint complete. Local Rule 220 requires that an amended 21 complaint
be complete in itself without reference to any prior pleading. This is because, as a 22 general rule,
an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 23 F.2d 55, 57
(9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no 24 longer
serves any function in the case. Therefore, in an amended complaint, as in an original 25

complaint, each claim and the involvement of each defendant must be sufficiently alleged. 26 ////
27 //// 28 //// 1 In accordance with the above, IT IS HEREBY ORDERED that: 2 1. Plaintiff's
request for leave to proceed in forma pauperis (ECF No. 2) is granted. 3 2. Plaintiff is obligated to
pay the statutory filing fee of \$350.00 for this action. All fees 4 || shall be collected and paid in
accordance with this court's order to Sacramento County Sheriff 5 || filed concurrently herewith. 6
3. Plaintiff's complaint is dismissed. 7 4. Plaintiff is granted thirty days from the date of service of
this order to file an amended 8 | complaint that complies with the requirements of the Civil Rights
Act, the Federal Rules of Civil 9 || Procedure, and the Local Rules of Practice. The amended
complaint must bear the docket 10 || number assigned this case and must be labeled "Amended
Complaint." Failure to file an 11 || amended complaint in accordance with this order will result in
a recommendation that this action 12 || be dismissed. 13 | Dated: March 2, 2023 / ae ☐☐ / a Ly a
4 CAROLYN K DELANEY
15 UNITED STATES MAGISTRATE JUDGE
16 17 18 | 1 avil0136.14 19 20 21 22 23 24 25 26 27 28