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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ALASKA

9 FRANK STEFFENSEN,

10 Plaintiff,

11 vs.

12 CITY of FAIRBANKS, et al.,

13 Defendants.

Case No. 4:09-cv-00004-RJB

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ORDER

On January 13, 2009, Frank Steffensen, representing himself, filed a civil rights complaint in the Superior Court for the State of Alaska, which was removed by the defendants to this Court on February 10, 2009.¹ On February 19, 2009, the federal defendants filed a motion for an extension of time to file their answer, and on the same day, the court received a motion for leave to file an amended complaint from Mr. Steffensen.² In addition, the defendants have now filed a motion to dismiss.³

¹Doc. 1.

²Docs. 8, 9; *see also Faile v. Upjohn Co.*, 988 F.2d 985, 988 (9th Cir. 1993) (an incarcerated pro se litigant completes “service” under Rule 5(b) of the Federal Rules of Civil Procedure upon submission to prison authorities for forwarding to the party to be served).

³Doc. 10.

1 **individual capacity** suit for **money damages** can be demonstrated by showing that the
2 official **caused** the alleged injury.⁹

3 Thus, in order to state a viable civil rights claim against state officials in their
4 individual capacities, allegations of personal participation are required.¹⁰ Without
5 allegations of personal participation, the claim must be dismissed. "State officials are not
6 subject to suit under section 1983 unless they play an affirmative part in the alleged
7 deprivation of constitutional rights."¹¹ In addition, state officials cannot be held liable for
8 alleged civil rights violations under the theory of respondeat superior (that is supervisory
9 liability).¹² Individuals cannot be held personally liable merely due to the fact that they have
10 supervisory authority over other defendants or employees.

11 If sued in their **official capacity** for **injunctive relief**, rather than money damages,
12 the Eleventh Amendment does not bar suit. State officials sued in their official capacity are
13 persons for purposes of 42 U.S.C. § 1983, "because official-capacity actions for
14 prospective relief are not treated as actions against the State."¹³ In an official capacity
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16 ⁹See *id.* at 166.

17 ¹⁰See *Richards v. Harper*, 864 F.2d 85, 88 (9th Cir. 1988).

18 ¹¹*King v. Atiyeh*, 814 F.2d 565, 568 (9th Cir. 1987) (citation omitted).

19 ¹²See e.g., *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (insufficient
20 showing of direct participation by Attorney General or Director of State Prison);
21 see also BLACK'S LAW DICTIONARY (8th ed. 2004) ("respondeat superior" is the
22 "doctrine holding an employer or principal liable for the employee's or agent's
23 wrongful acts committed within the scope of the employment or agency.").

24 ¹³*Kentucky v. Graham*, 473 U.S. at 167 n. 14; see also *Hafer v. Melo*, 502
25 U.S. 21, 27 (1991); *Will v. Michigan*, 491 U.S. 58, 71 n. 10 (1989); *Guam Soc. of*
26 *Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366, 1370-71 (9th Cir.), *cert.*
27 *denied*, 506 U.S. 1011 (1992); *Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320,
1327 (9th Cir. 1991); *Price v. Alaska*, 928 F.2d 824, 828 n. 3 (9th Cir. 1990), *cert.*
28 *denied*, 502 U.S. 967 (1991). Official capacity actions filed against state officials

1 suit, Mr. Steffensen must demonstrate that a **policy or custom** of the government entity
2 of which the official is an agent was the moving force behind the violation.¹⁴ Mr. Steffensen
3 must decide, for each defendant, whether he or she is being sued in his or her individual
4 (requesting money damages) or official (requesting injunctive relief) capacity; only rarely
5 will both apply.

6 Challenge to Conviction or Sentence

7 Mr. Steffensen is also cautioned that, if he is challenging the fact or duration of his
8 confinement, he may not do so through a civil rights action:

9 [W]hen a state prisoner seeks damages in a § 1983 suit, the district court
10 must consider whether a judgment in favor of the plaintiff would necessarily
11 imply the invalidity of his conviction or sentence; if it would, the complaint
12 must be dismissed unless the plaintiff can demonstrate that the conviction or
13 sentence has already been invalidated.¹⁵

14 for damages are merely an alternative way of pleading an action against the
15 state. See *Kentucky v. Graham*, 473 U.S. at 165; *Hafer v. Melo*, 502 U.S. 21, 27
16 (1991). Because the state is not a person for purposes of § 1983, “state officials,
17 when sued for damages in their official capacities, are likewise not ‘persons’
18 within the meaning of § 1983.” *Guam Soc. of Obstetricians & Gynecologists*, 962
19 F.2d at 1371.

20 ¹⁴See *Kentucky v. Graham*, 473 U.S. at 166; see also *Fogel v. Collins*, 531
21 F.3d 824 (9th Cir. 2008) (In a § 1983 case arising after police officers arrested
22 plaintiff and impounded his van because of messages painted on his vehicle,
23 summary judgment for defendants was affirmed where: 1) although defendants
24 violated plaintiff's First Amendment rights; 2) defendant-city had not implemented
25 an unconstitutional policy or custom, and defendants-police officers were entitled
26 to qualified immunity.).

27 ¹⁵*Heck v. Humphrey*, 512 U.S. 477, 487 (1994); *Cunningham v. Gates*, 312
28 F.3d 1148, 1153 (9th Cir. 2002), quoting *Heck*, 512 U.S. at 487 n. 6 (“In
evaluating whether claims are barred by *Heck*, an important touchstone is
whether a § 1983 plaintiff could prevail only by negating ‘an element of the
offense of which he has been convicted.’”); see also *Martin v. Sias*, 88 F.3d 774
(9th Cir. 1996), extending *Heck v. Humphrey* to federal prisoners and *Bivens*
actions.

1 Further, “[t]he fact that [a plaintiff] seeks money damages . . . as a remedy does not alter
2 this conclusion.”¹⁶ The Court notes that Mr. Steffensen's federal conviction is currently on
3 appeal.¹⁷

4 Amending Complaint

5 Mr. Steffensen's motion to file an amended complaint should be granted.¹⁸ The Court
6 will send a form to assist Mr. Steffensen in amending the complaint in compliance with this
7 Order. In completing this civil rights form, Mr. Steffensen must state, specifically, what
8 defendants did or did not do which he believes constitutes a legal wrong, and what specific
9 relief he seeks from the Court. In his amended complaint, Mr. Steffensen must give **dates**
10 **and facts** in support of each claim. Mr. Steffensen should state the facts in his own words,
11 as if he were **briefly** and **concisely** telling someone what happened. The facts must
12 specifically allege how **each** defendant has harmed him. Mr. Steffensen may later be given
13 an opportunity to file a brief on the issues in which he may more thoroughly argue his
14 case.¹⁹

16 ¹⁶ See *Wilkinson v. Dotson*, 125 U.S. 1242, 1248 (2005) (“a state prisoner's §
17 1983 action is barred (absent prior invalidation) -- no matter the relief sought (damages
18 or equitable relief), no matter the target of the prisoner's suit (state conduct leading to
19 conviction or internal prison proceedings) -- *if* success in that action would necessarily
20 demonstrate the invalidity of confinement or its duration.”); *Butterfield v. Bail*, 120
21 F.3d 1023, 1025 (9th Cir. 1997).

22 ¹⁷See *United States v. Frank T. Steffensen*, 4:08-cr-00006-RRB.

23 ¹⁸See FED. R. CIV. P 15(a).

24 ¹⁹ A complaint “shall contain a **short and plain statement** of the claim
25 showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2) (emphasis
26 added). A complaint is the “initial pleading that starts a civil actions and states
27 the basis for the court’s jurisdiction, the basis for the plaintiff’s claim, and the
28 demand for relief.” BLACK’S LAW DICTIONARY (8th ed. 2004). A brief, on the other
hand, is a “written statement setting out the legal contentions of a party in
litigation, ... consisting of legal and factual arguments and the authorities in
support of them.” *Id.*

1 Further, in his amended complaint, Mr. Steffensen should make no reference to the
2 initial complaint or to other extraneous documents. The Court cannot refer to a prior
3 pleading in order to make the amended complaint complete. An amended complaint must
4 be complete in itself without reference to any prior pleading.²⁰ This is because, as a
5 general rule, an amended complaint supersedes (takes the place of) the original
6 complaint.²¹

7 **IT IS HEREBY ORDERED:**

- 8 1. Mr. Steffensen's motion to amend his complaint (Doc. 9) is **GRANTED**. The initial
9 complaint is, therefore, dismissed, and the amended complaint must be filed on or
10 before **April 20, 2009**.
- 11 2. The Clerk of Court is directed to send a copy of this Court's form PS01, Complaint
12 Under the Civil Rights Act, with instructions, to Mr. Steffensen with a copy of this
13 Order.
- 14 3. The defendants' motions (Doc. 8 and 10) are DENIED as moot, but may be renewed
15 as appropriate, after the filing of the amended complaint; and Mr. Steffensen's
16 motion for U.S. Marshal service upon certain defendants (Doc. 9) is DENIED without
17 prejudice to renewal, if necessary, after the filing of his amended complaint.
- 18 4. All future papers to be filed with the Court must be identified with the name of the
19 Court, Case No. 4:09-cv-00004-RJB, the names of the plaintiff and the first
20 defendant, and the title of the document, as illustrated on the first page of this Order.
- 21 5. Mr. Steffensen shall serve a copy of all pleadings or documents he sends to the
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23 ²⁰ See D.Ak.LR 15.1(3).

24 ²¹ See *Florida Dept. of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 706
25 n. 2 (1982) ("It is the complaint which defines the nature of an action, and once
26 accepted, an amended complaint replaces the original."); *Hal Roach Studios, Inc.*
27 *v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (as a general
28 rule, an amended complaint supersedes (takes the place of) the original
complaint).

1 Court upon counsel for those defendants who have already been served and have
2 appeared. Mr. Steffensen shall include, with any original paper to be filed with the
3 Clerk of Court, a certificate stating the date that an exact copy of the document was
4 mailed, faxed or hand-delivered to the defendants' lawyer(s). A certificate of service
5 may be written in the following form at the end of his document:

6 I hereby certify that a copy of the above (name of document) was served
7 upon (name(s) of opposing counsel) by (mail/fax/hand-delivery) at _____
8 (address(es)) on (date).

9 (Mr. Steffensen's Signature)

10 Any paper received by a District Court Judge which has not been filed with the Clerk
11 of Court or which does not include a certificate of service will be disregarded by the
12 Court.

- 13 6. Mr. Steffensen shall provide the Court with the original, plus one complete and
14 legible copy, of every paper he submits for filing, as required by this Court's Local
15 Rule 10.1(b).
- 16 7. No party shall have any *ex parte* communication (that is, communication without the
17 presence and/or knowledge and consent of the other parties) with a District Court
18 Judge of this Court about the merits of this action. Mr. Steffensen should not write
19 letters to the Court, but must file any requests for action by the Court during these
20 proceedings in the form of a **motion**.
- 21 8. The Clerk of Court is directed to send a copy of the Court's motion form, PS15 to Mr.
22 Steffensen with this Order.
- 23 9. At all times, Mr. Steffensen shall keep the Court informed of any change of address,
24 by filing a notice titled "NOTICE OF CHANGE OF ADDRESS." The notice shall
25 contain **only** information about the change of address, and its effective date. The
26 notice shall not include any requests for any other relief.

1 10. The Clerk of Court is directed to send a copy of our *pro se* handbook, "Representing
2 Yourself in Alaska's Federal Court," to Mr. Steffensen with this Order.

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4 DATED this 10th day of March, 2009.

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6 ROBERT J. BRYAN
7 United States District Judge