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

MAURO ALEJANDRO,

CASE NO. CV F 06-0449 OWW LJO

Plaintiff,

**ORDER TO DISMISS COMPLAINT**

vs.

JASON WILLIAMSON #876, et al.,

Defendants.

**BACKGROUND**

Plaintiff Mauro Alejandro (“plaintiff”) is incarcerated and proceeds pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983 (“section 1983”). Plaintiff proceeds with a form complaint (“complaint”) to name as defendants Bakersfield Police Officers Jason Williamson and Aaron Stringer and California Highway Patrol officers identified as #16947 Ahse and #14770 Fallas (collectively “defendants”). The complaint appears to allege that after his November 20, 2005 arrest, plaintiff received medical attention. The complaint makes vague references to a “history of arrests,” “a target for possible excessive force,” and “excessively striking the individual ‘simultaneously’ with batons.” The complaint fails to distinguish plaintiff was subject to batons or witnessed another person

1 subject to batons.

2 **DISCUSSION**

3 **Standards For Screening**

4 This Court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). This Court  
6 must dismiss a complaint, or portion thereof, which “is frivolous, malicious or fails to state a claim upon  
7 which relief may be granted” or “seeks monetary relief from a defendant who is immune from such  
8 relief.” 28 U.S.C. § 1915A(b)(1) and (2). Moreover, “[a] trial court may dismiss a claim sua sponte  
9 under Fed.R.Civ.P. 12(b)(6). . . . Such dismissal may be made without notice where the claimant cannot  
10 possibly win relief.” *Omar v. Sea-Land Service, Inc.*, 813 F.2d 986, 991 (9<sup>th</sup> Cir. 1987); *see Wong v.*  
11 *Bell*, 642 F.2d 359, 361-362 (9<sup>th</sup> Cir. 1981). Sua sponte dismissal may be made before process is served  
12 on defendants. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989) (dismissals under 28 U.S.C. § 1915(d)  
13 are often made sua sponte); *Franklin v. Murphy*, 745 F.2d 1221, 1226 (9<sup>th</sup> Cir. 1984) (court may dismiss  
14 frivolous in forma pauperis action sua sponte prior to service of process on defendants).

15 Since plaintiff proceeds in forma pauperis, this Court, notwithstanding any filing fee that may  
16 have been paid, shall dismiss a case at any time if the Court determines the action is frivolous, malicious,  
17 fails to state a claim on which relief may be granted, or seeks monetary relief against an immune  
18 defendant. *See* 28 U.S.C. § 1915(e); 2 Schwarzer, Tashima & Wagstaffe, California Practice Guide:  
19 Federal Civil Procedure Before Trial (2006) Attacking the Pleadings, para. 9:226.1, pp. 9-69. A court  
20 need not accept as true factual allegations in in forma pauperis complaints and may reject “completely  
21 baseless” allegations, including those which are “fanciful,” “fantastic” or “delusional.” *Denton v.*  
22 *Hernandez*, 504 U.S. 25, 32, 112 S.Ct. 1728, 1733 (1992).

23 A claim is legally frivolous when it lacks an arguable basis either in law or fact. *Neitzke*, 490  
24 U.S. at 325; *Franklin*, 745 F.2d at 1227-1228. A federal court may dismiss a claim as frivolous where  
25 it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless.  
26 *Neitzke*, 490 U.S. at 327.

27 The test for maliciousness is a subjective one and requires the court to “determine the . . . good  
28 faith of the applicant.” *Kinney v. Plymouth Rock Squab Co.*, 236 U.S. 43, 46 (1915); *see Wright v.*

1 *Newsome*, 795 F.2d 964, 968 n. 1 (11<sup>th</sup> Cir. 1986). A lack of good faith is found most commonly in  
2 repetitive suits filed by plaintiffs who have used the advantage of cost-free filing to file a multiplicity  
3 of suits. A complaint is malicious if it suggests an intent to vex defendants or abuse the judicial process  
4 by relitigating claims decided in prior cases. *Crisafi v. Holland*, 655 F.2d 1305, 1309 (D.C. Cir. 1981);  
5 *Phillips v. Carey*, 638 F.2d 207, 209 (10<sup>th</sup> Cir. 1981); *Ballentine v. Crawford*, 563 F.Supp. 627, 628-629  
6 (N.D. Ind. 1983); *cf. Glick v. Gutbrod*, 782 F.2d 754, 757 (7<sup>th</sup> Cir. 1986) (court has inherent power to  
7 dismiss a case demonstrating “clear pattern of abuse of judicial process”). A lack of good faith or malice  
8 also can be inferred from a complaint containing untrue material allegations of fact or false statements  
9 made with intent to deceive the court. *See Horsey v. Asher*, 741 F.2d 209, 212 (8<sup>th</sup> Cir. 1984).

10 A complaint, or portion thereof, may be dismissed for failure to state a claim if it appears beyond  
11 doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to  
12 relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41,  
13 45-46, 78 S.Ct. 99 (1957)); *see also Palmer v. Roosevelt Lake Log Owners Ass’n*, 651 F.2d 1289, 1294  
14 (9<sup>th</sup> Cir. 1981). “[W]hen a federal court reviews the sufficiency of a complaint, before the reception of  
15 any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not  
16 whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to  
17 support claims.” *Scheurer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1688 (1974); *Gilligan v. Jamco*  
18 *Development Corp.*, 108 F.3d 246, 249 (9<sup>th</sup> Cir. 1997).

19 As further explained below, the complaint demonstrates plaintiff is entitled to offer no evidence  
20 for its vague, unsupportable claims.

### 21 The Complaint’s General Deficiencies

22 F.R.Civ.P. 8 establishes general pleading rules and provides in pertinent part:

23 (a) Claims for Relief. A pleading which sets forth a claim for relief . . . shall  
24 contain (1) a short and plain statement of the grounds upon which the court’s jurisdiction  
25 depends, unless the court already has jurisdiction and the claim needs no new grounds  
26 of jurisdiction to support it, (2) a short plain statement of the claim showing that the  
27 pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader  
28 seeks.

26 . . .

27 (e) Pleading to be Concise and Direct; Consistency.

1 (1) Each averment of a pleading shall be simple, concise and direct.

2 A pleading may not simply allege a wrong has been committed and demand relief. The  
3 underlying requirement is that a pleading give “fair notice” of the claim being asserted and the “grounds  
4 upon which it rests.” *Conley*, 355 U.S. 41, 47-48, 78 S.Ct. 99, 103 (1957); *Yamaguchi v. United States*  
5 *Dept. of Air Force*, 109 F.3d 1475, 1481 (9<sup>th</sup> Cir. 1997). Although a complaint need not outline all  
6 elements of a claim, “[i]t must be possible . . . for an inference to be drawn that these elements exist.”  
7 *Walker v. South Cent. Bell Telephone Co.*, 904 F.2d 275, 277 (5<sup>th</sup> Cir. 1990); *Lewis v. ACB Business*  
8 *Service, Inc.*, 135 F.3d 389, 405-406 (6<sup>th</sup> Cir. 1998).

9 Despite the flexible pleading policy of the Federal Rules of Civil Procedure, a complaint must  
10 give fair notice and state the elements of the claim plainly and succinctly. *Jones v. Community Redev.*  
11 *Agency*, 733 F.2d 646, 649 (9<sup>th</sup> Cir. 1984). A plaintiff must allege with at least some degree of  
12 particularity overt facts which defendant engaged in to support plaintiff’s claim. *Jones*, 733 F.2d at 649.  
13 Here, the complaint fails to comply with F.R.Civ.P. 8(a)(2), to provide fair notice of claims against  
14 defendants, and to demonstrate plaintiff is entitled to relief as to each defendant. The complaint fails  
15 to set forth specific acts, omissions or wrongs by defendants. The complaint fails to allege with any  
16 degree of particularity specific overt acts of defendants and in turn, resulting damages from defendants’  
17 overt acts. The complaint fails to seek specific relief which this Court is able to award. The complaint  
18 makes vague references to “batons” and fails to distinguish whether plaintiff was subject to batons or  
19 witnessed use of batons on another. Because the complaint fails to satisfy F.R.Civ.P. 8(a)(2)  
20 requirements, it must be dismissed.

21 **The Complaint’s Section 1983 Deficiencies**

22 The Civil Rights Act, under which this action was filed, provides:

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

26 42 U.S.C. § 1983.

27 To state a section 1983 claim, a plaintiff must plead that: (1) defendants acted under color of state  
28 law at the time the complained of act was committed; and (2) defendants deprived plaintiff of rights,

1 privileges or immunities secured by the Constitution or laws of the United States. *Gibson v. United*  
2 *States*, 781 F.2d 1334, 1338 (9<sup>th</sup> Cir. 1986). The complaint fails to state colorable claims (or any claims  
3 for that matter) against defendants in that it makes vague allegations as to arrest and baton use. The  
4 complaint articulates no deprivation of a right, privilege or immunity secured by the Constitution or laws  
5 of the United States.

6 Section 1983 requires that there be an actual connection or link between the actions of defendant  
7 and deprivation allegedly suffered. *See Monell v. Department of Social Services*, 436 U.S. 658 (1978);  
8 *Rizzo v. Goode*, 423 U.S. 362 (1976). The Ninth Circuit Court of Appeals has held that “[a] person  
9 ‘subjects’ another to deprivation of a constitutional right, within the meaning of section 1983, if he does  
10 an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally  
11 required to do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740,  
12 743 (9<sup>th</sup> Cir. 1978). The complaint fails to satisfy the linking requirement as to defendants and to  
13 articulate how defendants deprived plaintiff of constitutional rights and resulting harm. This Court  
14 advises plaintiff of the specific need to satisfy the linking requirement.

#### 15 Malice

16 This Court is concerned that plaintiff has brought this action in absence of good faith and  
17 attempts to take advantage of cost-free filing to vex defendants. Such attempt provides further grounds  
18 to dismiss plaintiff’s complaint.

#### 19 Attempt At Amendment

20 Plaintiff is granted an opportunity to attempt to amend his complaint to cure deficiencies.  
21 Plaintiff is further admonished that this Court’s Local Rule 15-220 requires an amended complaint to  
22 be complete in itself without reference to a prior pleading. As a general rule, an amended complaint  
23 supersedes the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9<sup>th</sup> Cir. 1967). After the filing  
24 of an amended complaint, the original pleadings serves no further function. Thus, in an amended  
25 complaint, each claim and involvement of each defendant must be sufficiently alleged.

#### 26 CONCLUSION AND ORDER

27 For the reasons discussed above, this Court:

- 28 1. DISMISSES plaintiff’s complaint and GRANTS plaintiff leave to amend;

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2. ORDERS plaintiff, no later than May 26, 2006, to file an amended complaint; and
3. **Admonishes plaintiff that failure to file an amended complaint in compliance with this order will result in a recommendation to dismiss this action for failure to obey a court order.**

IT IS SO ORDERED.

**Dated:** April 21, 2006  
66h44d

/s/ Lawrence J. O'Neill  
UNITED STATES MAGISTRATE JUDGE