

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

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

SOPHIA LOPEZ,	)	Case No. 1:09-cv-02174-LJO-JLT
	)	
Plaintiff,	)	ORDER GRANTING APPLICATION TO
	)	PROCEED IN FORMA PAUPERIS
vs.	)	(Doc 16)
	)	
MARTHA JOHNSON and RENEE	)	ORDER DISMISSING COMPLAINT WITH
RICHARDSON,	)	LEAVE TO AMEND
	)	
Defendants.	)	
	)	

---

Plaintiff is proceeding with a civil rights action pursuant to 42 U.S.C. § 1983. On January 6, 2010, plaintiff filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. 1). On April 26, 2010, the Court required Plaintiff to submit a new application to proceed *in forma pauperis* to provide more complete information. (Doc. 14). On May 13, 2010, Plaintiff filed a new application. (Doc. 16).

**I. IFP Motion**

In her new IFP motion, Plaintiff reports that she is newly employed for 6.5 hours per day at the Farmer’s Market in Bakersfield and is paid \$10.00 an hour. (Doc. 16 at 1). Assuming she works a five-day week Plaintiff makes approximately \$325.00 a week. Plaintiff states that she supports two minor children. (Id. at 2). She further states she has no other cash, savings or

1 assets. (Id.) Based on this submission, the Court finds that Plaintiff is unable to pay the costs of  
2 commencing this action. Accordingly, Plaintiff's IFP motion is granted.

3 **II. Complaint**

4 A. Screening

5 The Court is required to review a case filed *in forma pauperis*. 28 U.S.C. §1915A(a); 28  
6 U.S.C. 1915(e). The Court must review the complaint and dismiss the action if it is frivolous or  
7 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a  
8 defendant who is immune from such relief. 28 U.S.C. § 1915 (e)(2)(B); see Noll v. Carlson, 809  
9 F. 2d 1446, 1448 (9th Cir. 1987 (citing Franklin v. Murphy, 745 F. 2d 1221, 1228 (9th Cir.  
10 1984)). If the Court determines that the complaint fails to state a claim, leave to amend may be  
11 granted to the extent that the deficiencies of the complaint can be cured by amendment. Lopez v.  
12 Smith, 203 F.3d 1122, 1127-1128 (9th Cir. 2000) (en banc).

13 1. Section 1983 complaint

14 Plaintiff's complaint seeks damages under 42 U.S.C. § 1983,<sup>1</sup> which provides in pertinent  
15 part that:

16 Every person who, under color of any statute, ordinance, regulation, custom, or  
17 usage, of any State or Territory or the District of Columbia, subjects, or causes to  
18 be subjected, any citizen of the United States or other person within the  
19 jurisdiction thereof to the deprivation of any rights, privileges, or immunities  
20 secured by the Constitution and laws, shall be liable to the party injured in an  
21 action at law, suit in equity, or other proper proceeding for redress. . .

22 42 U.S.C. § 1983.

23 To plead a § 1983 violation, the plaintiff must allege facts from which it may be inferred  
24 that (1) plaintiff was deprived of a federal right, and (2) the person who deprived plaintiff of that  
25 right acted under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Collins v.  
26 Womancare, 878 F. 2d 1145, 1147 (9th Cir. 1989). To warrant relief under § 1983, the plaintiff  
27 must allege and show that the defendants' acts or omissions caused the deprivation of the

---

<sup>1</sup> Plaintiff also seeks declaratory and injunctive relief citing 28 U.S.C. §§ 2201 and 2202 and § 1983. (Doc. 1 at 1, 4).

1 plaintiff's constitutionally protected rights. Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1993).  
2 "A person deprives another of a constitutional right, within the meaning of section 1983, if he  
3 does an affirmative act, participates in another's affirmative acts, or omits to perform an act  
4 which he is legally required to do that causes the deprivation of which [the plaintiff complains]."  
5 Id. There must be an actual causal connection or link between the actions of each defendant and  
6 the deprivation alleged to have been suffered by the plaintiff. See Monell v. Department of  
7 Social Services, 436 U.S. 658, 691-692 (1978)(citing Rizzo v. Goode, 432 U.S. 362, 370-371  
8 (1976)).

9 2. Rule 8(a)

10 Section 1983 complaints are governed by the notice pleading standard in Federal Rule of  
11 Civil Procedure 8(a), which provides in relevant part that:

12 A pleading that states a claim for relief must contain:

13 (1) a short and plain statement of the grounds for the court's jurisdiction, unless  
14 the court already has jurisdiction and the claim needs no new jurisdictional  
support;

15 (2) a short and plain statement of the claim showing that the pleader is entitled to  
16 relief; and

17 (3) a demand for the relief sought, which may include relief in the alternative or  
different types of relief.

18 The Federal Rules of Civil Procedure adopt a flexible pleading policy. Nevertheless, a  
19 complaint must give fair notice and state the elements of the plaintiff's claim plainly and  
20 succinctly. Jones v. Community Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984). In  
21 other words, the plaintiff is required to give the defendants fair notice of what constitutes the  
22 plaintiff's claim and the grounds upon which it rests. Although a complaint need not outline all  
23 of the elements of a claim, it must be possible to infer from the allegations that all of the  
24 elements exist and that the plaintiff is entitled to relief under a viable legal theory. Walker v.  
25 South Cent. Bell Telephone Co., 904 F.2d 275, 277 (5th Cir. 1990). In Ashcroft v. Iqbal, 129  
26 S.Ct. 1337, 1349, (2009), the Court observed,

27 [T]he pleading standard Rule 8 announces does not require "detailed factual

1 allegations," but it demands more than an unadorned,  
2 the-defendant-unlawfully-harmed-me accusation. [Citations]. A pleading that  
3 offers "labels and conclusions" or "a formulaic recitation of the elements of a  
4 cause of action will not do." [Citation]. Nor does a complaint suffice if it tenders  
5 "naked assertion[s]" devoid of "further factual enhancement." [Citation].

6 The Court further clarified that,

7 a complaint must contain sufficient factual matter, accepted as true, to "state a  
8 claim to relief that is plausible on its face." [Citation]. A claim has facial  
9 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.  
11 [Citation]. The plausibility standard is not akin to a "probability requirement," but  
12 it asks for more than a sheer possibility that a defendant has acted unlawfully.  
13 [Citation]. Where a complaint pleads facts that are "merely consistent with" a  
14 defendant's liability, it "stops short of the line between possibility and plausibility  
15 of 'entitlement to relief.'"

16 Id. The Court instructed, "When there are well-pleaded factual allegations, a court should  
17 assume their veracity and then determine whether they plausibly give rise to an entitlement to  
18 relief. Id. at 1950. However, the conclusions contained in the pleading "are not entitled to the  
19 assumption of truth." Id.

## 20 B. Analysis

### 21 1. Summary of the Allegations

22 Plaintiff seeks to impose liability on defendants Martha Johnson and Renee Richardson of  
23 the Kern County Housing Authority pursuant to 42 U.S.C. § 1983 for allegedly violating her  
24 procedural due process rights under the Thirteenth and Fourteenth Amendments. Specifically,  
25 she alleges that on July 14, 2009, she received a letter from Richardson informing her that her  
26 "federal Section 8 housing assistance voucher had been terminated" based upon information she  
27 provided Richardson during an interview as part of an "annual recertification" process. (See  
28 Doc. 1 at 2).

29 Plaintiff states she then requested an "informal termination hearing" challenging the  
30 decision to terminate her housing assistance subsidy. (Doc. 1 at 2). Plaintiff states she made  
31 discovery requests including requesting a "verbatim recording of the 45 minutes (Annual  
32 Recertification Appointment)" between herself and Defendant Richardson which she states  
33 formed the basis for the denial of recertification for benefits. (Id.)

1 Plaintiff alleges that a hearing was held on November 5, 2009, at which she “articulated  
2 several affirmative defenses to the charging allegations . . . namely; plaintiff failed to provide  
3 information of family income.” (Doc. 1 at 2). Although not clear, Plaintiff appears to contend  
4 that her housing assistance benefits were terminated in part because “her son was two-thousand  
5 miles away at Fort Leavenworth, Kansas and was not actually living in the home during all  
6 relevant times.” (Id. at 3). Plaintiff does not explain why this fact was relevant to the denial of  
7 recertification or why, if true, the determination to refuse to recertify her benefits constituted a  
8 denial of federal rights.

9 Plaintiff states further that she was represented at the hearing “by a friend” who was  
10 restricted from “cross-examining” Richardson concerning the substance of the interview which  
11 led to the denial of recertification for benefits. (Doc. 1 at 3). In addition, Plaintiff contends that  
12 “a pile of papers” related to her discovery requests was presented to her only five minutes prior to  
13 the hearing and that no recording or transcript of the interview between herself and Defendant  
14 Richardson was ever provided. (Id.) She does not state that this impacted her ability to defend  
15 herself in the hearing.

16 In sum, Plaintiff asserts that “defendants acts or omissions” resulting in the termination of  
17 her housing voucher and violated her procedural due process rights under the Fourteenth  
18 Amendment. (Doc. 1 at 3).

## 19 2. The Alleged Defendants

20 In the caption of her complaint, Plaintiff names “Martha Johnson and Renee Richardson,  
21 of Kern County Housing Authority” as defendants. (Doc. 1 at 1).

### 22 a. Plaintiff has failed to state a cause of action against Martha 23 Johnson

24 Plaintiff identifies Martha Johnson as a defendant and described her as the “hearing  
25 officer” in Plaintiff’s administrative hearing. (Doc. 1 at 2). Plaintiff has not indicated whether  
26 Johnson is being sued in her individual or official capacity or both.

27 Despite Plaintiff’s claims of liability as to Johnson, hearing officers in quasi-judicial

1 proceedings are entitled to absolute immunity for any conduct related to the adjudication of a  
2 claim such as Plaintiff's. See Byers v. Anderson, Inc., 508 U.S. 429, 435-36 (1993) ("the  
3 'touchstone' for the doctrine's applicability has been 'performance of the function of resolving  
4 disputes between parties, or of authoritatively adjudicating private rights"); Guttman v. Khalsa,  
5 446 F.3d 1027, 1033 (10<sup>th</sup> Cir. 2006) ("The Supreme Court has long recognized that officials in  
6 administrative hearings can claim the absolute immunity that flows to judicial officers if they are  
7 acting in a quasi-judicial fashion.") Therefore, even if Johnson wrongfully prevented Plaintiff  
8 from cross-examining Richardson, liability may not be imposed on her. Moreover, any other  
9 claim against Johnson for her conduct related to her role as a hearing officer must fail. However,  
10 plaintiff is granted leave to amend her complaint to raise any non-quasi-judicial actions taken by  
11 Johnson that Plaintiff contends violated her rights that are protected by federal law.

12 b. Plaintiff' claim with respect to Defendant Renee Richardson is  
13 vague

14 Likewise, Plaintiff's §1983 claim against Defendant Richardson is vague. Plaintiff  
15 alleges that Richardson interviewed her regarding her Section 8 recertification, testified at  
16 Plaintiff's administrative hearing and informed her that her recertification had been denied based  
17 upon information provided during the interview. However, Plaintiff fails to identify the specific  
18 actions taken by Richardson that constituted a violation of her constitutional rights. Rather,  
19 Plaintiff's chief complaint appears to be that she was not afforded procedural due process in the  
20 administrative hearing which resulted in the denial of recertification for Section 8 benefits.  
21 Specifically, she alleges that she was not provided relevant documents until minutes before the  
22 hearing and that she was prevented from fully cross-examining Defendant Richardson during that  
23 proceeding. (See Doc. 1 at 3). However, how this allegation is connected to Richardson is not  
24 clear.

25 Due Process requires that a Section 8 applicant be permitted to request an informal  
26 hearing if denied eligibility to participate in the program and to make an oral presentation at the  
27 hearing. See Davis v. Mansfield Metropolitan Housing Authority, 751 F.2d 180, 185 (6<sup>th</sup> Cir.

1 1984). The discretion to terminate Section 8 assistance is defined and limited by federal  
2 regulations. Ellis v. Ritchie, 803 F.Supp. 1097, 1100 (E.D. Va. 1992) (citing 24 C.F.R. §  
3 882.210). In particular, the Agency regulations require that an applicant be permitted to examine  
4 any relevant documents before the hearing, to present evidence at the hearing and to question  
5 witnesses at the hearing. See 24 C.F.R. § 982.555(e)(2)(i), (5).

6 The scope of review by a federal court of a challenge to the denial of Section 8 eligibility  
7 is governed by the Administrative Procedures Act (“APA”), 5 U.S.C. § 701 *et seq.* Ellis, 803  
8 F.Supp. at 1100 (holding that 5 U.S.C. § 706(2)(D) “sets forth the standard of review that applies  
9 to determining the adequacy of the procedures followed in reaching an administrative decision.”)  
10 To state a claim, Plaintiff must show that the decision to deny recertification was “arbitrary,  
11 capricious, an abuse of discretion or otherwise not in accordance with the law.” Ellis, 803  
12 F.Supp. at 1100. Evaluation of whether an agency properly terminated Section 8 benefits  
13 involves a two-pronged analysis. First, the Court must determine whether the agency’s decision  
14 “was based on a consideration of the relevant factors and whether there has been a clear error of  
15 judgment.” Id. Next, the Court must determine, upon examination of the administrative record,  
16 whether the agency’s action exceeded the scope of its statutory authority and was, thus, not in  
17 accordance with the law. Id. at 1101.

18 Although Plaintiff’s claims that she was not allowed meaningful access to relevant  
19 documents prior to the hearing or to fully question Defendant Richardson at the hearing may state  
20 a cognizable claim under the APA challenging “the procedures followed in reaching an  
21 administrative decision,” see Ellis, 803 F.Supp. at 1100, neither action was taken by Defendant  
22 Richardson.

23 Importantly, Plaintiff acknowledges that the decision to deny recertification was based  
24 upon Plaintiff’s “failure to provide information of family income” and does not deny that she  
25 failed to do so. (Doc. 1 at 3). Notably, in Ellis, the Court observed that the recertification  
26 process under Section 8 requires a participant to submit information and documentation relating  
27 to the nature and amount of family assets, as well as family size and composition, and that the

1 regulations provide that failure to comply “may include termination of the participant’s eligibility  
2 for rental assistance benefits.” Ellis, 803 F.Supp. at 1099 (citing 24 C.F.R. § 813.109, § 882.210  
3 *et seq.*)

4 Finally, Plaintiff alleges that her representative was able to “[articulate] several  
5 affirmative defenses” challenging the basis for the Kern County Housing Authority’s denial of  
6 recertification. (Id.) However, she provides no factual basis upon which the Court can rely to  
7 conclude that these defenses demonstrated that the decision to refuse to recertify her benefits was  
8 arbitrary or capricious. However, Plaintiff will be granted leave to file an amended complaint to  
9 address these deficiencies, if she can.

### 10 3. Claims under the Thirteenth Amendment

11 The Thirteenth Amendment to the United States Constitution reads, “Neither slavery nor  
12 involuntary servitude, except as a punishment for crime whereof the party shall have been duly  
13 convicted, shall exist within the United States, or any place subject to their jurisdiction.”  
14 Involuntary servitude requires compulsion of services by the use or threatened use of physical or  
15 legal coercion. See United States v. Kozminski, 487 U.S. 931, 953 (1988).

16 Plaintiff makes no factual allegations in her complaint that would support a claim under  
17 the Thirteenth Amendment. Therefore, this claim will be dismissed.

### 18 4. Reference in the Complaint to Michael J. Jones

19 Inexplicably, Plaintiff’s complaint begins with the phrase “COMES NOW Plaintiff  
20 MICHAEL J. JONES and for its cause of action states; . . .” (See Doc. 1 at 1). Michael J. Jones  
21 is not listed as a plaintiff in this action and the body of the complaint fails to describe how he is a  
22 relevant party, if he is. Unless Jones intends to join this lawsuit as an interested plaintiff, any  
23 amended complaint shall delete this reference to him.

## 24 **III. Conclusion**

25 In summary, the Court must dismiss Plaintiff’s complaint as to all defendants for failure  
26 to state a claim. The Court will grant Plaintiff an opportunity to amend the complaint to address  
27 the deficiencies recounted in the body of this order. In her amended complaint, Plaintiff must



1 describe the specific unlawful actions taken by each defendant and describe how these actions  
2 constituted a denial due process or otherwise was contrary to federal law. In addition, she must  
3 state whether each defendant is sued in their individual or official capacity or both.

4 Plaintiff is informed that the Court cannot refer to a prior pleading and that Local Rule  
5 220 requires that an amended complaint be complete in itself without reference to any prior  
6 pleading. This is because, as a general rule, an amended complaint supercedes the original  
7 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended  
8 complaint, the original pleading no longer serves any function in the case. Therefore, in an  
9 amended complaint, as in an original complaint, each claim and the involvement of each  
10 defendant must be sufficiently alleged.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's request for leave to proceed in forma pauperis is GRANTED;
- 13 2. Plaintiff's complaint is DISMISSED WITH LEAVE TO AMEND; and
- 14 4. Plaintiff is GRANTED twenty days from the date of service of this order to file an  
15 amended complaint. The amended complaint must reference the docket number  
16 assigned to this case and must be labeled "First Amended Complaint."

17 Failure to file an amended complaint in accordance with this order will result in a  
18 recommendation that this action be dismissed pursuant to Local Rule 110.

19  
20 IT IS SO ORDERED.

21 Dated: May 20, 2010

21 /s/ Jennifer L. Thurston  
22 UNITED STATES MAGISTRATE JUDGE