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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.	)	(Document 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 May 20, 2010, the Court granted Plaintiff’s new IFP application but dismissed her complaint with leave amend. (Doc. 17). On June 15, 2010, Plaintiff filed a First Amended Complaint. (Doc. 18).

**I. Complaint**

A. Screening

The Court is required to review a case filed *in forma pauperis*. 28 U.S.C. §1915A(a); 28 U.S.C. 1915(e). The Court must review the complaint and dismiss the action if it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915 (e)(2)(B); see Noll v. Carlson, 809

1 F. 2d 1446, 1448 (9th Cir. 1987 (citing Franklin v. Murphy, 745 F. 2d 1221, 1228 (9th Cir.  
2 1984)). If the Court determines that the complaint fails to state a claim, leave to amend may be  
3 granted to the extent that the deficiencies of the complaint can be cured by amendment. Lopez v.  
4 Smith, 203 F.3d 1122, 1127-1128 (9th Cir. 2000) (en banc).

5 1. Section 1983 complaint

6 Plaintiff's complaint seeks damages under 42 U.S.C. § 1983. To plead a § 1983 violation,  
7 the plaintiff must allege facts from which it may be inferred that (1) plaintiff was deprived of a  
8 federal right, and (2) the person who deprived plaintiff of that right acted under color of state  
9 law. West v. Atkins, 487 U.S. 42, 48 (1988); Collins v. Womancare, 878 F. 2d 1145, 1147 (9th  
10 Cir. 1989). To warrant relief under § 1983, the plaintiff must allege and show that the  
11 defendants' acts or omissions caused the deprivation of the plaintiff's constitutionally protected  
12 rights. Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1993). "A person deprives another of a  
13 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates  
14 in another's affirmative acts, or omits to perform an act which he is legally required to do that  
15 causes the deprivation of which [the plaintiff complains]." Id. There must be an actual causal  
16 connection or link between the actions of each defendant and the deprivation alleged to have  
17 been suffered by the plaintiff. See Monell v. Department of Social Services, 436 U.S. 658, 691-  
18 692 (1978)(citing Rizzo v. Goode, 432 U.S. 362, 370-371 (1976)).

19 To state a claim against a governmental agency, the pleading must demonstrate that the a  
20 custom or policy of the entity caused the violation of Plaintiff's federally protected rights.  
21 Monell, 436 U.S. at 694. A plaintiff seeking to establish municipal liability under § 1983 may do  
22 so in one of three ways: 1) the plaintiff may demonstrate that a municipal employee committed  
23 the alleged constitutional violation "pursuant to a formal governmental policy or longstanding  
24 practice or custom which constitutes the standard operating procedure of the local governmental  
25 entity;" 2) the plaintiff may demonstrate that the person who committed the constitutional  
26 violation "was an official with final policy-making authority and that the challenged action itself  
27 thus constituted an act of official government policy;" or 3) the plaintiff may demonstrate that

1 “an official with final policy-making authority ratified a subordinate’s unconstitutional decision  
2 or action and the basis for it.” Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996).

3 2. Rule 8(a)

4 The Federal Rules of Civil Procedure adopt a flexible pleading policy. Nevertheless, a  
5 complaint must give fair notice and state the elements of the plaintiff’s claim plainly and  
6 succinctly. Jones v. Community Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984). In  
7 other words, the plaintiff is required to give the defendants fair notice of what constitutes the  
8 plaintiff’s claim and the grounds upon which it rests. Although a complaint need not outline all  
9 of the elements of a claim, it must be possible to infer from the allegations that all of the  
10 elements exist and that the plaintiff is entitled to relief under a viable legal theory. Walker v.  
11 South Cent. Bell Telephone Co., 904 F.2d 275, 277 (5th Cir. 1990). Conclusory allegations that  
12 are unsupported by facts are insufficient to state a claim under § 1983. Sherman v. Yakahi, 549  
13 F.2d 1287, 1290 (9th Cir. 1977).

14 B. Analysis

15 1. Summary of the Allegations

16 Plaintiff seeks to impose liability on defendants Martha Johnson and Renee Richardson of  
17 the Kern County Housing Authority pursuant to 42 U.S.C. § 1983 for violating her procedural  
18 due process rights under the Thirteenth and Fourteenth Amendments. Specifically, she alleges  
19 that she received a letter from “defendants” informing her “that they made a pre-termination  
20 decision as to eligibility to her Section 8 housing voucher.” (See Doc. 18 at 2). She asserts that  
21 the letter stated that these benefits were being terminated because she failed to “accurately report  
22 income of all household members as required by regulations.” (Id.)

23 Plaintiff alleges that she requested an informal hearing to challenge the decision to  
24 terminate her housing assistance subsidy and contends that the regulations “entitled her to  
25 appoint a ‘representative’ to represent her at the scheduled hearing.” (Doc. 18 at 2). She states  
26 that prior to the hearing her representative requested that defendants provide “‘a verbatim  
27 recording of the 45 minute’ (Annual Recertification Appointment)” but contends that they

1 nevertheless “failed and refused to provide plaintiff or her representative . . . the above requested  
2 transcripts before the hearing.” (Id.) She further contends that, in addition to the transcripts,  
3 none of “the information relied upon by the agency” in terminating her Section 8 benefits was  
4 given to her until “[a]pproximately five-minutes before the hearing [when] defendant RENEE  
5 RICHARDSON ‘shoved a pile of papers’ in plaintiff’s representative’s hand and said ‘here are  
6 responses to the discovery request you have filed.’” (Id.)

7 In addition, Plaintiff asserts that at the administrative hearing, her representative  
8 “attempted to explore the area of the actual conversational exchange between plaintiff and  
9 defendant RENEE RICHARDSON by way of cross-examination” but after “only 5 minutes of  
10 cross-examination of defendant RENEE RICHARDSON, defendant . . . Martha [Johnson]  
11 halted the hearing and stated ‘I know that Ms. Richardson asked [Plaintiff] . . . the correct  
12 questions during the pre-termination interview because I trained her myself.’” (Doc. 18 at 2).  
13 Plaintiff contends that by failing to provide her the requested discovery until minutes before the  
14 start of the hearing and by hindering her cross-examination of defendant Richardson, she was  
15 denied due process under the law and the Constitution. (See id. at 2, 3).

## 16 2. The Alleged Defendants

17 In the caption of her complaint, Plaintiff names as defendants “Martha Johnson and  
18 Renee Richardson, of Kern County Housing Authority” in their individual and official capacities.  
19 (Doc. 18 at 1).

## 20 3. Plaintiff has failed to state a cause of action against Martha Johnson

21 In her amended complaint, Plaintiff again complains about the acts of defendant Johnson  
22 in her role as the hearing officer despite the Court’s earlier determination that Johnson is entitled  
23 to immunity for these acts. (See Doc. 17 at 5-6) See Byers v. Anderson, Inc., 508 U.S. 429, 435-  
24 36 (1993) (“the ‘touchstone’ for the doctrine’s applicability has been ‘performance of the  
25 function of resolving disputes between parties, or of authoritatively adjudicating private rights’”);  
26 Guttman v. Khalsa, 446 F.3d 1027, 1033 (10<sup>th</sup> Cir. 2006) (“The Supreme Court has long  
27 recognized that officials in administrative hearings can claim the absolute immunity that flows to

1 judicial officers if they are acting in a quasi-judicial fashion.”).

2           Nevertheless, without explanation Plaintiff cites three cases. (See Doc. 18 at 1). None  
3 undermine the Court’s determination that Johnson is entitled to absolute quasi-judicial immunity.  
4 In addition to the authority cited in the Court’s prior order, another case, Perry v. City of  
5 Milwaukee Housing Authority, 2007 WL 1168733 (E.D. Wis., April 18, 2007), is directly on  
6 point and reinforces the Court’s determination. In Perry, the plaintiff brought a § 1983 action  
7 challenging a decision by a local housing agency to deny him Section 8 housing benefits and  
8 named, among others, the hearing examiner at his administrative hearing as a defendant. Id. at  
9 \*2. The court determined that because the hearing officer “presided over the informal hearing . .  
10 . questioned [the plaintiff] regarding his position on the denial of his application, and authored a  
11 written decision upholding the denial of [his] application for admission to the rent assistance  
12 program. . . . [she] was acting in a quasi-judicial capacity and as such, she is entitled to absolute  
13 quasi-judicial immunity.” Id. at \*5.

14           The facts as alleged in the amended complaint indicate that Defendant Johnson, like the  
15 defendant hearing officer in Perry, is being sued based entirely upon her conduct as presiding  
16 officer at the informal hearing. As such, she is entitled to absolute immunity from suit.

17           4. Plaintiff’ claim with respect to Defendant Renee Richardson is vague

18           In its previous order on the original complaint, the Court found Plaintiff’s claims against  
19 Defendant Richardson in her individual capacity to be vague. (Doc. 17 at 6). In her amended  
20 complaint, Plaintiff now contends that it was Richardson who “shoved a pile of papers in [her]  
21 representative’s hand” minutes before the hearing and who identified the papers as the discovery  
22 documents relevant to her case. (See Doc. 18 at 2). Although, not entirely clear, reading the  
23 amended complaint liberally, it appears Plaintiff is alleging that Defendant Richardson  
24 participated directly in effectively denying Plaintiff meaningful discovery prior to the hearing.

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, including the right to make an oral  
27 presentation. See Davis v. Mansfield Metropolitan Housing Authority, 751 F.2d 180, 185 (6<sup>th</sup>

1 Cir. 1984). The Housing Authority’s discretion to terminate Section 8 assistance is further  
2 defined and limited by federal regulations. Ellis v. Ritchie, 803 F.Supp. 1097, 1100 (E.D. Va.  
3 1992) (citing 24 C.F.R. § 882.210). In particular, with respect to the process afforded an  
4 applicant at an informal hearing challenging the termination or denial of Section 8 benefits,  
5 Agency regulations provide, *inter alia*, that a family be permitted the right to examine any  
6 relevant documents prior to the hearing and also have the right to present evidence and question  
7 any witnesses at a hearing. See 24 C.F.R. § 982.555(e)(2)(i), (5); see also 42 U.S.C. § 1437d(k).  
8 Thus, Plaintiff has stated a claim against Defendant Richardson.

#### 9 5. Official Capacity Defendants

10 As noted, to the extent Plaintiff attempts to assert that she was denied procedural due  
11 process at her informal administrative hearing, in contravention of applicable law and  
12 regulations, she may state a viable constitutional claim. See Hunter v. Underwood, 362 U.S.  
13 468, 477 (8<sup>th</sup> Cir. 2004) (“Section 1983 is the proper means by which a public housing tenant  
14 may challenge the action of a state housing agency that violates the United States Housing  
15 Act.”); Saxton v. Housing Authority of City of Tacoma, 1 F.3d 881, 883-84 (9<sup>th</sup> Cir. 1993)  
16 (noting that § 1983 is proper vehicle for raising a procedural due process claim against a housing  
17 authority). In both Hunter and Saxton, the local housing authority or its administrator in his  
18 official capacity was named as the proper defendant. The Court notes that to the extent Plaintiff  
19 names defendants Johnson and Richardson in their official capacities, she is, in effect, naming  
20 the public entity, in this case the Kern County Housing Authority. Kentucky v. Graham, 473  
21 U.S. 159, 165-166 (1985). If she desires to raise a procedural due process claim alleging her  
22 federal rights were violated when she was denied the opportunity for meaningful discovery and  
23 cross-examination as provided by law, she must clearly present this claim against the proper  
24 defendant and must provide allegations that would given rise to a credible claim of governmental  
25 liability. Trevino v. Gates, 99 F.3d at 918. Because it appears that Plaintiff may state a cause of  
26 action against the Kern County Housing Authority for due process violations, leave to amend is  
27 granted.

1 **II. Conclusion**

2 In summary, the Court must dismiss Plaintiff's complaint as to defendant Johnson and the  
3 Kern County Housing Authority for failure to state a claim. The Court will grant Plaintiff an  
4 opportunity to file a Second Amended Complaint to address the deficiencies recounted in the  
5 body of this order. If she wishes to name the Kern County Housing Authority, she must make  
6 factual allegations that satisfy the pleading requirements against this governmental agency.  
7 Trevino v. Gates, 99 F.3d at 918. Likewise, if she wishes to name Johnson, *it must be* based  
8 upon wrongful acts by Johnson that are *unrelated* to her role as the hearing officer.

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

16 Alternatively, if Plaintiff does not wish to amend the complaint or she cannot state causes  
17 of action against defendant Johnson or the Kern County Housing Authority, she may proceed on  
18 the First Amended Complaint against only defendant Richardson in her individual capacity.  
19 However, Plaintiff is advised that if she chooses not to file a Second Amended Complaint, all of  
20 the damages sought in the First Amended Complaint, namely the request to reinstate her housing  
21 benefits, may not be available to her.

22 If Plaintiff fails to file a Second Amended Complaint within the time frame set forth  
23 below, the Court will presume that she has chosen to proceed on the First Amended Complaint  
24 and will recommend dismissal of defendants Johnson and the Kern County Housing Authority  
25 without leave to amend.

26 Accordingly, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff's First Amended Complaint as to all defendants except defendant

1 Richardson, is DISMISSED WITH LEAVE TO AMEND;

2           2.       Plaintiff is GRANTED twenty days from the date of service of this order to file a  
3 Second Amended Complaint. The Second Amended Complaint must reference the assigned case  
4 number and must be labeled "Second Amended Complaint."

5           3.       If Plaintiff fails to file a Second Amended Complaint within the time frame set  
6 forth above, the Court will presume that she has elected to proceed on the First Amended  
7 Complaint as to defendant Richardson, in her individual capacity, only. In this event, the Court  
8 will recommend dismissal of defendants Johnson and the Kern County Housing Authority  
9 without leave to amend.

10  
11 IT IS SO ORDERED.

12 Dated: June 21, 2010

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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