

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

MARK A. MEZA,

Plaintiff, No. 2:08-CV-1004-MJP

VS.

**SOLANO COUNTY CUSTODY
DIVISION, et al.,**

Defendants. ORDER

Plaintiff is a former state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). However, his situation is complicated by the fact that Plaintiff was released from custody while his IFP application was pending. Therefore, Plaintiff will be ordered to re-apply to proceed IFP under the general provisions of 28 U.S.C. § 1915(a) – a blank IFP application form is attached to this order for that purpose.

Before Plaintiff's new IFP application may be granted, however, he must also re-

1 file his § 1983 complaint in conformity with the ruling which follows. The court is required to
2 screen complaints brought by pro se plaintiffs seeking relief against a governmental entity or
3 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a
4 complaint or portion thereof if the pro se plaintiff has raised claims that are legally “frivolous or
5 malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief
6 from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

7 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.

8 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
9 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
10 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
11 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,
12 has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir.
13 1989); Franklin, 745 F.2d at 1227.

14 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
15 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
16 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
17 Corp. v. Twombly, __ U.S. __, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355 U.S.
18 41, 47 (1957)). In order to survive dismissal for failure to state a claim a complaint must contain
19 more than “a formulaic recitation of the elements of a cause of action;” it must contain factual
20 allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, *id.*
21 However, “[s]pecific facts are not necessary; the statement [of facts] need only “give the
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” Erickson v.
23 Pardus, __ U.S. __, 127 S.Ct. 2197, 2200 (2007) (quoting Bell, slip op. at 7-8, in turn quoting
24 Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this standard, the
25 court must accept as true the allegations of the complaint in question, Erickson, *id.*, and construe
26 the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236

1 (1974).

2 The court finds the allegations in plaintiff's complaint so vague and conclusory that
3 it is unable to determine whether the current action is frivolous or fails to state a claim for relief.
4 The court has determined that the complaint does not contain a short and plain statement as
5 required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a
6 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones v.
7 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least
8 some degree of particularity overt acts which defendants engaged in that support plaintiff's claim.
9 Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the
10 complaint must be dismissed. The court will, however, grant leave to file an amended complaint.

11 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
12 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
13 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
14 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
15 there is some affirmative link or connection between each defendant's actions and the claimed
16 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th
17 Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and
18 conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v.
19 Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

20 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
21 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
22 amended complaint be complete in itself without reference to any prior pleading. This is because,
23 as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay,
24 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading
25 no longer serves any function in the case. Therefore, in an amended complaint, as in an original
26 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff is ordered (if he wishes to proceed) to re-submit an IFP application
3 under the general provisions applicable to all non-incarcerated parties. Plaintiff has 30 days from
4 the date of this order to submit that application.

5 2. Plaintiff's complaint is dismissed without prejudice.
6 3. Within 30 days from the date of this order, plaintiff shall complete the attached
7 Notice of Amendment and submit the following documents to the court:

8 a. The completed Notice of Amendment; and
9 b. An original and one copy of the Amended Complaint.

10 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
11 Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must
12 bear the docket number assigned this case and must be labeled "Amended Complaint"; failure to
13 file an amended complaint in accordance with this order will result in a recommendation that this
14 action be dismissed.

15 The clerk of the court shall provide Plaintiff with a copy of this order and all attachments.

16
17 Dated this 13th day of April, 2009.

18
19
20 
21 _____
22 Marsha J. Pechman
23 U.S. District Judge
24
25
26

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

MARK A. MEZA,

Plaintiff, No. 2:08-CV-1004-MJP

VS.

SOLANO COUNTY CUSTODY DIVISION,
et al.,

NOTICE OF AMENDMENT

Defendants.

Plaintiff hereby submits the following document in compliance with the court's order filed :

Amended Complaint

DATED:

Plaintiff