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

JAMES R. FEATHERSTONE,

Plaintiff,

No. 2:08-cv-2354-JFM (PC)

vs.

PERRY RENIFF, Sheriff, 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 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). Accordingly, the request to proceed in forma pauperis will be granted.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be

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1 granted, or that seek monetary relief from a defendant who is immune from such relief. 28  
2 U.S.C. § 1915A(b)(1),(2).

3 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
4 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
5 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
7 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
8 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
9 Cir. 1989); Franklin, 745 F.2d at 1227.

10 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and  
11 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
12 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
13 Corp. v. Twombly, \_\_ U.S. \_\_, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355 U.S.  
14 41, 47 (1957)). In order to survive dismissal for failure to state a claim a complaint must contain  
15 more than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
16 allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, *id.*  
17 However, “[s]pecific facts are not necessary; the statement [of facts] need only “‘give the  
18 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’”” Erickson  
19 v. Pardus, \_\_ U.S. \_\_, 127 S.Ct. 2197, 2200 (2007) (quoting Bell, slip op. at 7-8, in turn quoting  
20 Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this standard, the  
21 court must accept as true the allegations of the complaint in question, Erickson, *id.*, and construe  
22 the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236  
23 (1974).

24 Plaintiff’s complaint contains the following allegations. In September 2007, he  
25 was transferred from state prison to the Butte County Jail for hearing on a habeas corpus petition.  
26 On November 20, 2007, the petition was granted, plaintiff’s prison commitment was vacated,

1 and the criminal charges were refiled with bail set. Plaintiff alleges that he was unable to bail out  
2 of jail due to an improper “no bail hold” placed on him by the California Department of  
3 Corrections and Rehabilitation (CDCR). Plaintiff names two defendants, the Sheriff of Butte  
4 County and the Director of the CDCR. Plaintiff seeks money damages.

5 The Civil Rights Act under which this action was filed provides as follows:

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

11 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
12 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
13 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
14 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
15 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
16 omits to perform an act which he is legally required to do that causes the deprivation of which  
17 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

18 Moreover, supervisory personnel are generally not liable under § 1983 for the  
19 actions of their employees under a theory of respondeat superior and, therefore, when a named  
20 defendant holds a supervisory position, the causal link between him and the claimed  
21 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862  
22 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.  
23 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel  
24 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th  
25 Cir. 1982).

26 There are no allegations in the complaint setting forth specific acts or omissions  
by either of the named defendants in connection with the events complained of, and it appears  
that the two defendants named in this action have been included solely on the basis of respondeat

1 superior. For that reason, the complaint does not state a cognizable claim for relief against either  
2 defendant. However, because it is possible that this defect could be cured by amendment of the  
3 complaint, either to name as defendants individuals personally involved in the events complained  
4 of or to allege specific acts or omissions by one or more of the presently named defendants, or  
5 both, the court will grant leave to file an amended complaint.

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

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

23           On November 18, 2008, plaintiff filed a request for appointment of counsel. The  
24 United States Supreme Court has ruled that district courts lack authority to require counsel to  
25 represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296,  
26 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance

1 of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.  
2 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the  
3 court does not find the required exceptional circumstances. Plaintiff's request for the  
4 appointment of counsel will therefore be denied.

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

- 6 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 7 2. Plaintiff's complaint is dismissed.
- 8 3. Within thirty days from the date of this order, plaintiff shall complete the

9 attached Notice of Amendment and submit the following documents to the court:

- 10 a. The completed Notice of Amendment; and
- 11 b. An original and one copy of the Amended Complaint.

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

- 17 4. Plaintiff's November 18, 2008 request for appointment of counsel is denied.

18 DATED: January 14, 2009.

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21 UNITED STATES MAGISTRATE JUDGE

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FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES R. FEATHERSTONE,

Plaintiff,

No. 2:08-cv-2354-JFM (PC)

vs.

PERRY RENIFF, Sheriff, et al.,

NOTICE OF AMENDMENT

Defendants.

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

\_\_\_\_\_ Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff