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

DEMETRIUS COLEMAN,

Plaintiff,

No. CIV S-08-2959 FCD KJM P

vs.

VALLEJO POLICE DEPARTMENT, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a former prisoner proceeding with an action for violation of civil rights under 42 U.S.C. § 1983. On July 27, 2009, the court recommended that this action be dismissed for plaintiff’s failure to file an application to proceed in forma pauperis. Plaintiff has now filed his application, so the court’s recommendation will be vacated.

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 plaintiff’s complaint under 28 U.S.C. § 1915A(a). The court must dismiss the complaint or portion thereof if plaintiff has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

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

8 In order to avoid dismissal for failure to state a claim a complaint must contain
9 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements
10 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other
11 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
12 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a
13 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.
14 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
15 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129
16 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be
17 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200
18 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
19 Rhodes, 416 U.S. 232, 236 (1974).

20 The court finds the allegations in plaintiff’s complaint are so vague that the
21 complaint fails to state a valid claim. It appears plaintiff may be attempting to plead an
22 excessive force claim. Plaintiff is informed that in order to state a claim for excessive force in
23 violation of the Eighth Amendment he must allege facts showing that he has been subjected to
24 the wanton and unnecessary infliction of pain. Whitley v. Albers, 475 U.S. 312, 319 (1986).
25 With respect to any claim that officers seized personal funds and destroyed property, it does not
26 appear that plaintiff can state a claim for relief under federal law. The only possible claim would

1 arise under the Due Process Clause of the Fourteenth Amendment and the United States
2 Supreme Court has held that “an unauthorized intentional deprivation of property by a state
3 employee does not constitute a violation of the procedural requirements of the Due Process
4 Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is
5 available.” Hudson v. Palmer, 468 U.S. 517, 533 (1984). The California Legislature has
6 provided a remedy for tort claims against public officials in the California Government Code,
7 §§ 900, et seq.

8 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a
9 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones
10 v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at
11 least some degree of particularity overt acts which defendants engaged in that support plaintiff’s
12 claim. Id. The court will dismiss plaintiff’s complaint. However, the court will grant leave to
13 file an amended complaint, if plaintiff is able to amend while complying fully with Federal Rule
14 of Civil Procedure 11.

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
16 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See
17 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
18 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
19 there is some affirmative link or connection between a defendant’s actions and the claimed
20 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
21 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
22 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
23 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

24 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
25 order to make plaintiff’s amended complaint complete. Local Rule 15-220 requires that an
26 amended complaint be complete in itself without reference to any prior pleading. This is

1 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
2 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
3 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
4 original complaint, each claim and the involvement of each defendant must be sufficiently
5 alleged.

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

- 7 1. The court's August 3, 2009 findings and recommendations are vacated.
- 8 2. Plaintiff's request for leave to proceed in forma pauperis (Docket No. 11) is
9 granted.
- 10 3. Plaintiff's complaint is dismissed.
- 11 4. Plaintiff is granted thirty days from the date of service of this order to file an
12 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
13 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
14 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file
15 an original and two copies of the amended complaint; failure to file an amended complaint in
16 accordance with this order will result in a recommendation that this action be dismissed.

17 DATED: January 22, 2010.

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19 _____
U.S. MAGISTRATE JUDGE

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