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

MICHAEL BILLINGSLEY,

Plaintiff,

No. CIV S-08-3048 KJM P

vs.

SOLANO COUNTY JAIL, et al.,

Defendants.

ORDER

_____/

Plaintiff is a county jail inmate 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.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$25.00 will be assessed by this order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff’s trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the

1 preceding month's income credited to plaintiff's prison trust account. These payments will be
2 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's
3 account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

4 The court is required to screen complaints brought by prisoners seeking relief
5 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
6 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
7 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may
8 be granted, or that seek monetary relief from a defendant who is immune from such relief. 28
9 U.S.C. § 1915A(b)(1),(2).

10 A claim is legally frivolous when it lacks an arguable basis either in law or in
11 fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-
12 28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
13 indisputably meritless legal theory or where the factual contentions are clearly baseless.
14 Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however
15 inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d
16 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227. A complaint, or portion thereof, should
17 only be dismissed for failure to state a claim upon which relief may be granted if it appears
18 beyond doubt that plaintiff can prove no set of facts in support of the claim or claims that would
19 entitle him to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (1969).

20 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
21 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell
23 Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964-65 (2007). A complaint must
24 contain more than "a formulaic recitation of the elements of a cause of action;" it must contain
25 factual allegations sufficient "to raise a right to relief above the speculative level." Id. However,
26 "[s]pecific facts are not necessary; the statement [of facts] need only "give the defendant fair

1 notice of what the . . . claim is and the grounds upon which it rests.””” Erickson v. Pardus, 551
2 U.S. 89, 127 S.Ct. 2197 (2007). In reviewing a complaint under this standard, the court must
3 accept as true the allegations of the complaint, id., and construe the pleading in the light most
4 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

5 Plaintiff alleges that he was injured in April but did not receive corrective surgery
6 until October. As a result of the delay, a bone had to be rebroken but the defendants are refusing
7 to provide him with further corrective surgery. He names as defendants Solano County Jail and
8 “a doctor and medical staff” at the jail.

9 While plaintiff’s allegations may state a claim for the denial of medical care,
10 plaintiff has not linked his claims to a particular defendant. He does not describe who was
11 responsible for the original delay of the surgery nor who has denied him further care. Moreover,
12 to the extent he seeks to hold Solano County Jail, and thus the County itself liable, he has not
13 alleged that a jail policy was the moving force behind the constitutional violation. Oviatt v.
14 Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992).

15 The court has determined that the complaint does not contain a short and plain
16 statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible
17 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and
18 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
19 must allege with at least some degree of particularity overt acts which defendants engaged in that
20 support plaintiff’s claim. Id. Because plaintiff has failed to comply with the requirements of
21 Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to
22 file an amended complaint.

23 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
24 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See
25 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
26 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless

1 there is some affirmative link or connection between a defendant's actions and the claimed
2 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
3 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
4 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
5 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

15 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

16 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

17 Plaintiff is assessed an initial partial filing fee of \$25.00. All fees shall be collected and paid in
18 accordance with this court's order to the Sheriff of Solano County filed concurrently herewith.

19 3. Plaintiff's complaint is dismissed.

20 4. Plaintiff is granted thirty days from the date of service of this order to file an
21 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
22 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
23 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file
24 an original and two copies of the amended complaint; failure to file an amended complaint in
25 accordance with this order will result in a recommendation that this action be dismissed.

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5. The Clerk of the Court is directed to send plaintiff the form for a civil rights action by a prisoner.

DATED: April 16, 2009.



U.S. MAGISTRATE JUDGE