

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

JOHN RIVERA,

Plaintiff, No. 2:08-cv-3106 JFM (PC)

VS.

SACRAMENTO COUNTY
SHERIFF'S DEPARTMENT, et al.,

Defendants. **ORDER**

16 Plaintiff is a county jail inmate proceeding pro se. Plaintiff seeks relief pursuant
17 to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C.
18 § 1915. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C.
19 § 636(b)(1).

20 Plaintiff has submitted a declaration that makes the showing required by 28
21 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

22 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28
23 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee
24 in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will
25 direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account
26 and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly

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

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

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
13 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
14 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
15 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
16 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
17 Cir. 1989); Franklin, 745 F.2d at 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
19 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355
22 U.S. 41, 47 (1957)). In order to survive dismissal for failure to state a claim a complaint must
23 contain more than "a formulaic recitation of the elements of a cause of action;" it must contain
24 factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic,
25 id. However, "[s]pecific facts are not necessary; the statement [of facts] need only "give the
26 defendant fair notice of what the . . . claim is and the grounds upon which it rests."'" Erickson

1 v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007) (quoting Bell, 127 S.Ct. at 1964, in turn
2 quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this
3 standard, the court must accept as true the allegations of the complaint in question, Erickson, *id.*,
4 and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416
5 U.S. 232, 236 (1974).

6 Plaintiff's complaint, filed December 22, 2008, contains the following allegations.
7 Plaintiff has "a medical condition of the heart which requires medication." Complaint, filed
8 December 22, 2008, at 3. On July 29, plaintiff was booked into jail. He informed an unnamed
9 physician of the need for medication. He "repeatedly requested" the medication and never
10 received it. He also went to sick call and requested the medication from another unnamed
11 physician, but did not receive it. On October 31, plaintiff was rushed to U.C. Davis for his heart
12 problem. On December 5, plaintiff was told that his heart condition had worsened. Plaintiff
13 seeks money damages.

14 Plaintiff names as defendants the Sacramento County Sheriffs Department and the
15 Rio Consumnes Center Medical Staff. Although the nature of plaintiff's claims are clear, he
16 must name specific individual defendants who have caused or contributed to the alleged violation
17 of plaintiff's constitutional rights. For that reason, plaintiff's complaint will be dismissed. The
18 court will, however, grant leave to file an amended complaint.

19 If plaintiff chooses to amend the complaint, plaintiff must identify specific
20 individuals who have caused or contributed to the inadequate medical care alleged in the
21 complaint, and the amended complaint must allege in specific terms how each named defendant
22 is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative
23 link or connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode,
24 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588
25 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official
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1 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
2 268 (9th Cir. 1982).

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

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

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

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

14 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
15 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the Rio
16 Cosumnes Correctional Center filed concurrently herewith.

17 3. Plaintiff's complaint is dismissed.

18 4. Within thirty days from the date of this order, plaintiff shall complete the
19 attached Notice of Amendment and submit the following documents to the court:

20 a. The completed Notice of Amendment; and

21 b. An original and one copy of the Amended Complaint.

22 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
23 Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must
24 bear the docket number assigned this case and must be labeled "Amended Complaint"; failure to

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1 file an amended complaint in accordance with this order will result in a recommendation that this
2 action be dismissed.

3 DATED: January 27, 2009.

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5 John F. Worldwide
6 UNITED STATES MAGISTRATE JUDGE

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FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN RIVERA

Plaintiff, No. 2:08-cv-3106 JFM (PC)

VS.

SACRAMENTO COUNTY
SHERIFFS DEPARTMENT, et al.,

NOTICE OF AMENDMENT

Defendants.

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

Amended Complaint

DATED:

Plaintiff