

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

MANUEL BLANCO,

Plaintiff,

No. 2:09-cv-0629 FCD KJN P

VS.

SACRAMENTO SHERIFF,
et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed April 29, 2009, plaintiff's complaint was dismissed with leave to file an amended complaint. After receiving extensions of time, plaintiff has filed an amended complaint.

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

8 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
9 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
10 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
11 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
12 (1957)). In order to survive dismissal for failure to state a claim, a complaint must contain more
13 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
14 allegations sufficient “to raise a right to relief above the speculative level.” Id. However,
15 “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the defendant fair
16 notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v. Pardus, 551
17 U.S. 89, 93 (2007) (quoting Bell Atlantic Corp., 550 U.S. at 555) (citations and internal
18 quotations marks omitted). In reviewing a complaint under this standard, the court must accept
19 as true the allegations of the complaint in question, id., and construe the pleading in the light
20 most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

21 Plaintiff alleges that on March 25, 2008, the Sacramento Sheriff and Sacramento
22 Police Department came to his home to arrest him, during which he was allegedly “assaulted,
23 mistreated and abused” by the “Sac. Sheriff, Police, Sgt., Lt.” (Am. Compl. at 3.) The only
24 named defendant is a “Griep B.” as Sheriff of Sacramento County. However, in 2008, John
25 McGuinness was Sheriff of Sacramento County. Moreover, plaintiff included no charging
26 allegations as to defendant “Griep B.” This court cannot evaluate plaintiff’s claims against

1 defendant Griep unless he is adequately identified and the amended complaint contains
2 allegations specifically stating what actions he took that violated plaintiff's constitutional rights.

3 While plaintiff may state a claim cognizable in a civil rights action, a plaintiff
4 must connect each named defendant clearly with the claimed denial of his rights. Farmer v.
5 Brennan, 511 U.S. 825, 837, 843 (1994) (official's liability for deliberate indifference to assault
6 requires that official know of and disregard an "excessive risk"); Johnson v. Duffy, 588 F.3d 740,
7 743-44 (9th Cir. 1978) (discussing "requisite causal connection" in section 1983 cases between
8 named defendant and claimed injury); Barren v. Harrington, 152 F.3d 1193, 1194-95 (9th Cir.
9 1998), cert. denied, 525 U.S. 1154 (1999) ("A plaintiff must allege facts, not simply conclusions,
10 that show that an individual was personally involved in the deprivation of his civil rights.").

11 Plaintiff has named several Doe defendants in his amended complaint. Plaintiff
12 was previously instructed that he must identify each defendant by name¹ in order to challenge
13 their actions on March 25, 2008. (See April 29, 2009 Order.) Plaintiff is informed that the court
14 is unable to order service of process without the names of specific defendants. "As a general
15 rule, the use of "John Doe" to identify a defendant is not favored." Gillespie v. Civiletti, 629
16 F.2d 637, 642 (9th Cir.1980). Therefore, plaintiff must specifically name individual defendants
17 in his amended complaint along with a description of their position.² Plaintiff must also
18 articulate the specific action each named defendant took that he alleges violated his constitutional
19 right.

20 Moreover, plaintiff's claims against the Sacramento County Sheriff and
21 Sacramento Police Department also fail to state a cognizable civil rights claim. To allege a
22 § 1983 claim against a local governmental entity such as the Sheriff's Department or Police
23

24

25 ¹ Plaintiff may find the names of the officers in the arrest report prepared after the
incident on March 25, 2008.

26 ² If plaintiff discovers the identity of an unnamed defendant in a timely fashion he may
move to amend his complaint to add the newly discovered defendant.

1 Department, plaintiff must allege a constitutional deprivation and a policy, custom, or practice of
2 the municipality that was the “moving force” of the constitutional deprivation. Monell v.
3 Department of Social Services, 436 U.S. 658, 694-95 (1978); Villegas v. Gilroy Garlic Festival
4 Ass'n, 541 F.3d 950, 957 (9th Cir. 2008).

5 A local governmental entity such as the Sheriff's Department or Police
6 Department “may not be sued under § 1983 for an injury inflicted solely by its employees or
7 agents. Instead, it is when execution of a government's policy or custom, whether made by its
8 lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts
9 the injury that the government as an entity is responsible under § 1983.” Monell, 436 U.S. at
10 694. Thus, a local governmental entity is not liable for the acts of its employees unless “the
11 action that is alleged to be unconstitutional implements or executes a policy statement,
12 ordinance, regulation, or decision officially adopted or promulgated by that body's officers” or
13 unless the alleged constitutional deprivation was “visited pursuant to a governmental ‘custom’
14 even though such a custom has not received formal approval through the body's official
15 decisionmaking channels.” Id. at 690-91.

16 Here, the amended complaint, is devoid of allegations regarding any official
17 policy, custom, or practice pursuant to which the Sheriff's deputies inflicted the allegedly
18 excessive force. See Monell, 436 U.S. at 690-91. Plaintiff, therefore, fails to state an excessive
19 force claim against the Sheriff's Department or the Police Department.

20 The court finds the allegations in plaintiff's amended complaint so vague and
21 conclusory that it is unable to determine whether the current action is frivolous or fails to state a
22 claim for relief. The court has determined that the amended complaint does not contain a short
23 and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a
24 flexible pleading policy, a complaint must give fair notice and state the elements of the claim
25 plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).
26 Plaintiff must allege with at least some degree of particularity overt acts which defendants

1 engaged in that support plaintiff's claim. Id. Because plaintiff has failed to comply with the
2 requirements of Fed. R. Civ. P. 8(a)(2), the amended complaint must be dismissed. The court
3 will, however, grant leave to file a second amended complaint.

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

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

21 Finally, if plaintiff files an amended complaint, he must include in the caption the
22 names of each defendant against whom he is asserting a claim. See Fed. R. Civ. P. 10(a); see
23 also Ferdik v. Bonzelet, 963 F.2d 1258, 1262-63 (9th Cir. 1992) (dismissing action for refusal to
24 comply with court orders to name defendants in the caption).

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

26 1. Plaintiff's amended complaint is dismissed; and

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

3 a. The completed Notice of Amendment; and
4 b. An original and one copy of the Second Amended Complaint.

5 Plaintiff's second amended complaint shall comply with the requirements of the Civil Rights
6 Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the second amended
7 complaint must bear the docket number assigned this case and must be labeled "Second
8 Amended Complaint"; failure to file a second amended complaint in accordance with this order
9 may result in the dismissal of this action.

10 DATED: July 13, 2010

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12 
13 KENDALL J. NEWMAN
14 UNITED STATES MAGISTRATE JUDGE

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MANUEL BLANCO,

Plaintiff, No. 2:09-cv-0629 FCD KJN

VS.

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et al.,

NOTICE OF AMENDMENT

Defendants.

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

Second Amended Complaint

DATED:

Plaintiff