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

WAYDE HOLLIS HARRIS,

Plaintiff,

No. CIV S-09-1557 FCD KJM P

vs.

STATE OF CALIFORNIA, et al.,

Defendants.

ORDER

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Plaintiff is a 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.

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 \$33.12 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.

17 A complaint, or portion thereof, should only be dismissed for failure to state a  
18 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set  
19 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &  
20 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer  
21 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a  
22 complaint under this standard, the court must accept as true the allegations of the complaint in  
23 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the  
24 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,  
25 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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1           The court finds the allegations in plaintiff's complaint so vague and conclusory  
2 that it fails to state a claim upon which relief can be granted. Although the Federal Rules of  
3 Civil Procedure adopt a flexible pleading policy, a complaint must give fair notice and state the  
4 elements of the claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d  
5 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity overt  
6 acts which defendants engaged in that support plaintiff's claim. Id. Plaintiff's complaint must be  
7 dismissed. The court will, however, grant leave to file an amended complaint.

8           If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
9 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
10 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Plaintiff must provide facts and then indicate  
11 how those facts amount to a violation of federal law.

12           The complaint must allege in specific terms how each named defendant is  
13 involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link  
14 or connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423  
15 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588  
16 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations of official participation in civil  
17 rights violations are not sufficient, Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982),  
18 nor are allegations too speculative to establish causation of injury.

19           Plaintiff complains about the conditions of confinement to which he was  
20 subjected while in the San Joaquin County Jail. Plaintiff is informed that in order to state a  
21 claim for a violation of the Eighth Amendment for inadequate conditions of confinement,  
22 plaintiff must show that jail officials exposed him to a "substantial risk of serious harm," while  
23 displaying "deliberate indifference" to that risk. Farmer v. Brennan, 511 U.S. 825, 834 (1991).  
24 With respect to medical care, plaintiff states a claim under the Eighth Amendment if prison  
25 officials' acts or omissions are sufficiently harmful to evidence deliberate indifference to serious  
26 medical needs." Estelle v. Gamble, 429 U.S. 97, 104-06 (1976).

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

9           Finally, the court notes that plaintiff has requested the appointment of counsel.  
10 The United States Supreme Court has ruled that district courts lack authority to require counsel  
11 to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S.  
12 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary  
13 assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015,  
14 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the  
15 present case, the court does not find the required exceptional circumstances. Plaintiff's request  
16 for the appointment of counsel will therefore be denied.

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

- 18           1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 19           2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.  
20 Plaintiff is assessed an initial partial filing fee of \$33.12. All fees shall be collected and paid in  
21 accordance with this court's order to the Director of the California Department of Corrections  
22 and Rehabilitation filed concurrently herewith.
- 23           3. Plaintiff's complaint is dismissed.
- 24           4. Plaintiff is granted thirty days from the date of service of this order to file an  
25 amended complaint that complies with the requirements of the Civil Rights Act, the Federal  
26 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the

1 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file  
2 an original and two copies of the amended complaint; failure to file an amended complaint in  
3 accordance with this order will result in a recommendation that this action be dismissed.

4 5. Plaintiff's request for the appointment of counsel (#3) is denied.

5 DATED: November 24, 2009.

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8 U.S. MAGISTRATE JUDGE

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