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

10 EDWARD A. BATTISTE,

11 Plaintiff,

No. CIV S-09-3511 GGH P

12 vs.

13 WARDEN JAMES WALKER, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff pro se filed this action while he was a state prisoner. It appears that
17 plaintiff has subsequently been released. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and
18 has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding
19 was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Plaintiff has
20 consented to the jurisdiction of the undersigned in this matter. See Docket # 6.

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

23 The determination that plaintiff may proceed in forma pauperis does not complete
24 the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case
25 at any time if it determines the allegation of poverty is untrue, or the action is frivolous or
26 malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against

1 an immune defendant. The court cannot make this determination on the present record.

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

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
10 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
14 Cir. 1989); Franklin, 745 F.2d at 1227.

15 A complaint must contain more than a “formulaic recitation of the elements of a
16 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
17 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
18 “The pleading must contain something more...than...a statement of facts that merely creates a
19 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal
20 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient
21 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft
22 v. Iqbal, __ U.S. __, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127 S.Ct.
23 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows the
24 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

25 Id.

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1 In reviewing a complaint under this standard, the court must accept as true the
2 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
3 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,
4 and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.
5 1843 (1969).

6 The complaint states a colorable claim for relief against defendant Warden James
7 Walker pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b).

8 However, as to plaintiff's claims of a violation of the Eighth Amendment in this
9 42 U.S.C. § 1983 action, plaintiff has erred in naming California State Prison - Sacramento
10 (CSPS) as a defendant. The Eleventh Amendment serves as a jurisdictional bar to suits brought
11 by private parties against a state or state agency unless the state or the agency consents to such
12 suit. See Quern v. Jordan, 440 U.S. 332 (1979); Alabama v. Pugh, 438 U.S. 781 (1978)(per
13 curiam); Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). In the instant case, the
14 State of California has not consented to suit. Accordingly, plaintiff's claims against CSPS are
15 frivolous and must be dismissed.

16 As to the putative defendant identified only as "housing sergeant 2nd watch who
17 signed off on my move to Unit A6-104" (complaint, p. 12), not only has plaintiff failed to name
18 this individual, rendering service of the complaint upon any such person not possible, but, aside
19 from "signing off," plaintiff does not even include or describe the involvement of this unnamed
20 party in any constitutional deprivation he claims to have suffered within his allegations. This
21 unnamed defendant will be dismissed, but plaintiff will be granted leave to amend.

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

1 deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d
2 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,
3 vague and conclusory allegations of official participation in civil rights violations are not
4 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. Plaintiff's request to proceed in forma pauperis is granted;

14 2. Plaintiff's claims against defendants California State Prison - Sacramento and
15 the unnamed 2nd watch housing sergeant are dismissed for the reasons discussed above, with
16 leave to file an amended complaint within twenty-eight days from the date of service of this
17 Order. Failure to file an amended complaint will result in the dismissal of these defendants from
18 this action.

19 3. Upon filing an amended complaint or expiration of the time allowed therefor,
20 the court will make further orders for service of process upon some or all of the defendants.

21 DATED: April 5, 2010

22 /s/ Gregory G. Hollows

23 _____
24 GREGORY G. HOLLOWES
25 UNITED STATES MAGISTRATE JUDGE

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