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

10 TIMOTHY LEE MORALES,

11 Plaintiff,

No. CIV S 09-3610 GGH P

12 vs.

13 CALIFORNIA FORENSIC MEDICAL  
14 GROUP, INC., et al.,

15 Defendants.

ORDER

16 \_\_\_\_\_/  
17 Plaintiff is a Solano County Jail inmate proceeding pro se. He seeks relief  
18 pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to  
19 proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302  
20 pursuant to 28 U.S.C. § 636(b)(1).

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 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28  
24 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$ 9.00 will be assessed by this  
25 order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to  
26 collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the

1 Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the  
2 preceding month's income credited to plaintiff's prison trust account. These payments will be  
3 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's  
4 account exceeds \$10.00, until the filing fee is paid in full. 28 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 A complaint must contain more than a "formulaic recitation of the elements of a  
19 cause of action;" it must contain factual allegations sufficient to "raise a right to relief above the  
20 speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).  
21 "The pleading must contain something more...than...a statement of facts that merely creates a  
22 suspicion [of] a legally cognizable right of action." Id., quoting 5 C. Wright & A. Miller, Federal  
23 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). "[A] complaint must contain sufficient  
24 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft  
25 v. Iqbal, No. 07-1015, 2009 WL 1361536 at \* 12 (May 18, 2009) (quoting Twombly, 550 U.S. at  
26 570, 127 S.Ct. 1955). "A claim has facial plausibility when the plaintiff pleads factual content

1 that allows the court to draw the reasonable inference that the defendant is liable for the  
2 misconduct alleged.” Id.

3 In reviewing a complaint under this standard, the court must accept as true the  
4 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
5 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,  
6 and resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.  
7 1843 (1969).

8 Plaintiff names the following as defendants: the California Forensic Medical  
9 Group, Inc.; Solano County Jail Medical Department (alternatively, plaintiff also identifies the  
10 California Forensic Medical Group, Inc. as employed as the Solano County Jail Medical  
11 Department); and Ravinder Kadervari, M.D. Plaintiff alleges that his eyes “hurt due to blurry  
12 vision and irritation of un-focused sight.” Complaint, p. 3. Plaintiff states that after grieving this  
13 condition on November 30, 2009, he was provided with eye exam on December 2, 2009. Id. He  
14 avers that he was informed that he needed glasses but was also told that “they,” whom he does  
15 not otherwise identify, would neither provide him with glasses or send him to an optometrist for  
16 further medical attention for his eyes. Id. Plaintiff states that he was told that he was denied  
17 further medical care by Dr. Kadervari. Id. Plaintiff seeks punitive damages and injunctive relief.  
18 Id.

19 In order to state a § 1983 claim for violation of the Eighth Amendment based on  
20 inadequate medical care, plaintiff must allege “acts or omissions sufficiently harmful to evidence  
21 deliberate indifference to serious medical needs.” Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct.  
22 285, 292 (1976). To prevail, plaintiff must show both that his medical needs were objectively  
23 serious, and that defendants possessed a sufficiently culpable state of mind. Wilson v. Seiter,  
24 501 U.S. 294, 299, 111 S. Ct. 2321, 2324 (1991); McKinney v. Anderson, 959 F.2d 853 (9th Cir.  
25 1992) (on remand). The requisite state of mind for a medical claim is “deliberate indifference.”  
26 Hudson v. McMillian, 503 U.S. 1, 4, 112 S. Ct. 995, 998 (1992).

1 A serious medical need exists if the failure to treat a prisoner's condition could  
2 result in further significant injury or the unnecessary and wanton infliction of pain. Indications  
3 that a prisoner has a serious need for medical treatment are the following: the existence of an  
4 injury that a reasonable doctor or patient would find important and worthy of comment or  
5 treatment; the presence of a medical condition that significantly affects an individual's daily  
6 activities; or the existence of chronic and substantial pain. See, e.g., Wood v. Housewright, 900  
7 F. 2d 1332, 1337-41 (9th Cir. 1990) (citing cases); Hunt v. Dental Dept., 865 F.2d 198, 200-01  
8 (9th Cir. 1989). McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled on other  
9 grounds, WMX Technologies v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

10 "While severe eye injuries or legal blindness may constitute a serious medical  
11 need," such is not the case, for example, with regard to "reading glasses." Canell v. Multnomah  
12 County, 141 F. Supp. 2d 1046, 1057 (D. Or. 2001), citing Franklin v. State of Oregon, 662 F.2d  
13 1337 (9th Cir.1981); McMillen v. Fairman, 1997 WL 603853 \*3 (N.D. Ill. 1997) (some  
14 discomfort suffered as a result of broken eyeglasses not being replaced insufficient to  
15 demonstrate a serious medical need). On the other hand, an Eighth Amendment claim can be  
16 stated if, after confiscation of glasses and subsequent denial of medical treatment, significant  
17 consequences result. Koehl v. Dalsheim, 85 F. 3d 86 (2<sup>nd</sup> Cir, 1996). The complaint will be  
18 dismissed but plaintiff will be granted leave to amend to set forth additional facts to demonstrate  
19 an Eighth Amendment violation.

20 In addition, plaintiff must more clearly identify which defendant or defendants are  
21 responsible for the conduct resulting in any alleged deprivation plaintiff has suffered. That is, if  
22 plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
23 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.  
24 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how  
25 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there  
26 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 In accordance with the above, IT IS HEREBY ORDERED that:

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

14 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.  
15 Plaintiff is assessed an initial partial filing fee of \$9.00. All fees shall be collected and paid in  
16 accordance with this court's order to the Director of the California Department of Corrections  
17 and Rehabilitation filed concurrently herewith.

18 3. The complaint is dismissed for the reasons discussed above, with leave to file  
19 an amended complaint within twenty-eight days from the date of service of this order. Failure to  
20 file an amended complaint will result in a recommendation that the action be dismissed.

21 DATED: April 6, 2010

22 /s/ Gregory G. Hollows

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24 GREGORY G. HOLLOWES  
25 UNITED STATES MAGISTRATE JUDGE

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