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

MICHELEE MARIA-GOLLIHAR,

Plaintiff,

No. CIV S-10-135 MCE KJM PS

vs.

COUNTY OF SAN JOAQUIN, et al.,

Defendants.

ORDER

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Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302(c)(21).

Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

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1 A claim is legally frivolous when it lacks an arguable basis either in law or in  
2 fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-  
3 28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
4 indisputably meritless legal theory or where the factual contentions are clearly baseless.  
5 Neitzke, 490 U.S. at 327.

6 In order to avoid dismissal for failure to state a claim a complaint must contain  
7 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements  
8 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other  
9 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
10 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a  
11 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.  
12 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
13 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129  
14 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be  
15 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200  
16 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.  
17 Rhodes, 416 U.S. 232, 236 (1974).

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

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1 Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to  
2 file an amended complaint.

3           If plaintiff chooses to amend the complaint, plaintiff must set forth the  
4 jurisdictional grounds upon which the court’s jurisdiction depends. Federal Rule of Civil  
5 Procedure 8(a). Further, plaintiff must demonstrate how the conduct complained of has resulted  
6 in a deprivation of plaintiff’s federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

7           The Civil Rights Act under which this action was filed provides as follows:

8           Every person who, under color of [state law] . . . subjects, or  
9 causes to be subjected, any citizen of the United States . . . to the  
10 deprivation of any rights, privileges, or immunities secured by the  
Constitution . . . shall be liable to the party injured in an action at  
law, suit in equity, or other proper proceeding for redress.

11 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
12 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
13 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
14 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
15 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or  
16 omits to perform an act which he is legally required to do that causes the deprivation of which  
17 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

18           Moreover, supervisory personnel are generally not liable under § 1983 for the  
19 actions of their employees under a theory of respondeat superior and, therefore, when a named  
20 defendant holds a supervisory position, the causal link between him and the claimed  
21 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862  
22 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.  
23 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel  
24 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th  
25 Cir. 1982).

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1 As the complaint now stands, it appears plaintiff may be able to state a claim for  
2 excessive force against an employee of the San Joaquin County Sheriff's Department. However,  
3 with respect to plaintiff's remaining allegations, a claim under section 1983 has not been stated.  
4 There are no allegations that any official policy gave rise to the alleged constitutional  
5 deprivation. See Monell v. Department of Social Servs., 436 U.S. 658 (1978). The claims  
6 against the Sheriff's Department and California State Department of Corrections and  
7 Rehabilitation, therefore, cannot lie.

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

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

17 1. Plaintiff's request to proceed in forma pauperis is granted;  
18 2. Plaintiff's complaint is dismissed; and  
19 3. Plaintiff is granted thirty days from the date of service of this order to file an  
20 amended complaint that complies with the requirements of the Federal Rules of Civil Procedure,  
21 and the Local Rules of Practice; the amended complaint must bear the docket number assigned  
22 this case and must be labeled "Amended Complaint"; plaintiff must file an original and two  
23 copies of the amended complaint; failure to file an amended complaint in accordance with this  
24 order will result in a recommendation that this action be dismissed.

25 DATED: February 11, 2010.

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U.S. MAGISTRATE JUDGE