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

10 DARRELL JOHNSON,

11 Plaintiff,

No. CIV S-10-0699 GGH P

12 vs.

13 WARDEN MARTEL, et al.,

14 Defendants.

ORDER

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

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

22 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28
23 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently
24 without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C.
25 § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding
26 month's income credited to plaintiff's prison trust account. These payments shall be collected

1 and forwarded by the appropriate agency to the Clerk of the Court each time the amount in
2 plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

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

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

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

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 On March 19, 2010, the United States District Court for the Northern District
7 transferred this action to this court. In the transfer order, the Northern District Court noted that
8 the complaint contained two distinct claims. In one claim, plaintiff alleged constitutional errors
9 at his trial which he alleged entitled him to release and damages. In the second claim, plaintiff
10 alleged that he had not received adequate medical care at Mule Creek State Prison. The Northern
11 District Court dismissed the claims alleging constitutional errors at trial. Accordingly, only the
12 claims alleging inadequate medical care are before the undersigned.

13 The only defendant named in connection with the inadequate medical care claims
14 is defendant Warden Martel. Plaintiff alleges that defendant Martel allowed a "malpracticing"
15 doctor to work on site and allowed plaintiff's hernia to go untreated. As relief, plaintiff seeks
16 money damages and treatment for his hernia.

17 Defendants sued in their individual capacity must be alleged to have: personally
18 participated in the alleged deprivation of constitutional rights; known of the violations and failed
19 to act to prevent them; or implemented a policy that repudiates constitutional rights and was the
20 moving force behind the alleged violations. Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th
21 Cir. 1991); Hansen v. Black, 885 F.2d 642 (9th Cir. 1989); Taylor v. List, 880 F.2d 1040 (9th Cir.
22 1989). "Although a § 1983 claim has been described as 'a species of tort liability,' Imbler v.
23 Pachtman, 424 U.S. 409, 417, 96 S. Ct. 984, 988, 47 L.Ed.2d 128, it is perfectly clear that not
24 every injury in which a state official has played some part is actionable under that statute."
25 Martinez v. State of California, 444 U.S. 277, 285, 100 S. Ct. 553, 559 (1980). "Without
26 proximate cause, there is no § 1983 liability." Van Ort v. Estate of Stanewich, 92 F.3d 831, 837

1 (9th Cir. 1996).

2 Plaintiff does not allege how defendant Martel knew that the “malpracticing”
3 doctor failed to treat his hernia. Nor does plaintiff allege that defendant Martel implemented a
4 policy that resulted in his hernia not being treated. For these reasons, plaintiff’s claims against
5 defendant Martel are dismissed with leave to amend. If plaintiff files an amended complaint, he
6 must also include additional information regarding his hernia including for how long it went
7 untreated and any injuries he suffered as a result of not receiving treatment. Plaintiff may also
8 identify the doctor who failed to treat his hernia and discuss the circumstances surrounding the
9 failure to treat.

10 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
11 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See
12 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
13 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
14 there is some affirmative link or connection between a defendant’s actions and the claimed
15 deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d
16 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,
17 vague and conclusory allegations of official participation in civil rights violations are not
18 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

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

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

4 The fee shall be collected and paid in accordance with this court's order to the Director of the
5 California Department of Corrections and Rehabilitation filed concurrently herewith.

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

9 DATED: April 5, 2010

10 /s/ Gregory G. Hollows

11 UNITED STATES MAGISTRATE JUDGE

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