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

CHRISTOPHER JACKSON,

Plaintiff,

No. CIV S-10-1627 DAD P

vs.

CALIFORNIA DEP'T OF CORRECTIONS
AND REHABILITATION,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule 302 and 28 U.S.C. § 636(b)(1).

I. In Forma Pauperis Application

Plaintiff has submitted an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, plaintiff will be granted leave to proceed in forma pauperis.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. See 28 U.S.C. §§ 1914(a) & 1915(b)(1). An initial partial filing fee of \$15.55 will be assessed by this

1 order. See 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate
2 agency to collect the initial partial filing fee from plaintiff’s prison trust account and forward it to
3 the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of
4 twenty percent of the preceding month’s income credited to plaintiff’s prison trust account.
5 These payments will be collected and forwarded by the appropriate agency to the Clerk of the
6 Court each time the amount in plaintiff’s account exceeds \$10.00, until the filing fee is paid in
7 full. See 28 U.S.C. § 1915(b)(2).

8 II. Screening Requirement

9 The court is required to screen complaints brought by prisoners seeking relief
10 against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.
11 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
12 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be
13 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
14 U.S.C. § 1915A(b)(1) & (2).

15 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
16 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
17 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
18 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
19 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
20 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
21 Cir. 1989); Franklin, 745 F.2d at 1227.

22 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
23 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
24 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
25 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
26 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must

1 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain
2 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,
3 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
4 allegations of the complaint. See Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740
5 (1976). The court must also construe the pleading in the light most favorable to the plaintiff and
6 resolve all doubts in the plaintiff’s favor. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

7 III. Plaintiff’s Complaint and Leave to Amend

8 In his complaint, plaintiff alleges that delays in obtaining a necessary knee surgery
9 while imprisoned have caused him to suffer pain and further damage to his knee. Plaintiff seeks
10 monetary damages, naming the California Department of Corrections and Rehabilitation (CDCR)
11 as the sole defendant in this action. Plaintiff is advised that an action against the CDCR is barred
12 by the Eleventh Amendment. See Dittman v. California, 191 F.3d 1020, 1025-26 (9th Cir.1999)
13 (“In the absence of a waiver by the state or a valid congressional override, under the eleventh
14 amendment, agencies of the state are immune from private damage actions or suits for injunctive
15 relief brought in federal court. The State of California has not waived its Eleventh Amendment
16 immunity with respect to claims brought under § 1983 in federal court, and the Supreme Court
17 has held that § 1983 was not intended to abrogate a State's Eleventh Amendment immunity[.]”)
18 (citations, alteration, and internal quotation marks omitted); see also Pittman v. Oregon
19 Employment Dep't, 509 F.3d 1065, 1071 (9th Cir.2007) (“[A]n unconsenting State is immune
20 from suits brought in federal courts by her own citizens as well as by citizens of another State.”).
21 Therefore, the court will dismiss the complaint and grant plaintiff leave to file an amended
22 complaint should he be capable of naming specific defendants. Plaintiff is further advised that
23 although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to
24 the defendants and must allege facts that support the elements of the claim plainly and succinctly.
25 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege
26 with at least some degree of particularity overt acts which defendants engaged in that support his

1 claims. Id.

2 If plaintiff chooses to file an amended complaint, plaintiff must allege facts
3 demonstrating how the conditions complained of resulted in a deprivation of his federal
4 constitutional or statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The
5 amended complaint must allege in specific terms how each named defendant was involved in the
6 deprivation of plaintiff's rights. There can be no liability under 42 U.S.C. § 1983 unless there is
7 some affirmative link or connection between a defendant's actions and the claimed deprivation.
8 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
9 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations of
10 official participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673
11 F.2d 266, 268 (9th Cir. 1982).

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

19 IV. Eighth Amendment Claim

20 The court will provide plaintiff the following legal standards applicable to an
21 Eighth Amendment claim of inadequate medical care. The unnecessary and wanton infliction of
22 pain constitutes cruel and unusual punishment prohibited by the Eighth Amendment. Whitley v.
23 Albers, 475 U.S. 312, 319 (1986); Ingraham v. Wright, 430 U.S. 651, 670 (1977); Estelle v.
24 Gamble, 429 U.S. 97, 105-06 (1976). In order to prevail on a claim of cruel and unusual
25 punishment, a prisoner must allege and prove that objectively he suffered a sufficiently serious
26 deprivation and that subjectively prison officials acted with deliberate indifference in allowing or

1 causing the deprivation to occur. Wilson v. Seiter, 501 U.S. 294, 298-99 (1991).

2 Where a prisoner’s Eighth Amendment claims arise in the context of medical
3 care, the prisoner must allege and prove “acts or omissions sufficiently harmful to evidence
4 deliberate indifference to serious medical needs.” Estelle, 429 U.S. at 106. An Eighth
5 Amendment inadequate medical care claim has two elements: “the seriousness of the prisoner’s
6 medical need and the nature of the defendant’s response to that need.” McGuckin v. Smith, 974
7 F.2d 1050, 1059 (9th Cir. 1991), overruled on other grounds by WMX Techs., Inc. v. Miller, 104
8 F.3d 1133 (9th Cir. 1997) (en banc).

9 A medical need is serious “if the failure to treat the prisoner’s condition could
10 result in further significant injury or the ‘unnecessary and wanton infliction of pain.’”
11 McGuckin, 974 F.2d at 1059 (quoting Estelle v. Gamble, 429 U.S. at 104). Indications of a
12 serious medical need include “the presence of a medical condition that significantly affects an
13 individual’s daily activities.” Id. at 1059-60. By establishing the existence of a serious medical
14 need, a prisoner satisfies the objective requirement for proving an Eighth Amendment violation.
15 Farmer v. Brennan, 511 U.S. 825, 834 (1994).

16 If a prisoner establishes the existence of a serious medical need, he must then
17 show that prison officials responded to the serious medical need with deliberate indifference.
18 Farmer, 511 U.S. at 834. In general, deliberate indifference may be shown when prison officials
19 deny, delay, or intentionally interfere with medical treatment, or may be shown by the way in
20 which prison officials provide medical care. Hutchinson v. United States, 838 F.2d 390, 393-94
21 (9th Cir. 1988). Before it can be said that a prisoner’s civil rights have been abridged with regard
22 to medical care, however, “the indifference to his medical needs must be substantial. Mere
23 ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.”
24 Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at
25 105-06). Deliberate indifference is “a state of mind more blameworthy than negligence” and
26 “requires ‘more than ordinary lack of due care for the prisoner’s interests or safety.’” Farmer,

1 511 U.S. at 835 (quoting Whitley, 475 U.S. at 319).

2 Delays in providing medical care may manifest deliberate indifference. Estelle,
3 429 U.S. at 104-05. To establish a claim of deliberate indifference arising from delay in
4 providing care, a plaintiff must allege facts showing that the delay was harmful. See Berry v.
5 Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994); McGuckin, 974 F.2d at 1059; Wood v.
6 Housewright, 900 F.2d 1332, 1335 (9th Cir. 1990); Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th
7 Cir. 1989); Shapley v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985).
8 "A prisoner need not show his harm was substantial; however, such would provide additional
9 support for the inmate's claim that the defendant was deliberately indifferent to his needs." Jett
10 v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). See also McGuckin, 974 F.2d at 1060.

11 Finally, mere differences of opinion between a prisoner and prison medical staff
12 as to proper medical care do not give rise to a § 1983 claim. Toguchi v. Chung, 391 F.3d 1051,
13 1058 (9th Cir. 2004) (quoting Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996)); Sanchez
14 v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir.
15 1981).

16 CONCLUSION

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

18 1. Plaintiff's June 25, 2010 application to proceed in forma pauperis (Doc. No. 2)
19 is granted.

20 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
21 Plaintiff is assessed an initial partial filing fee of \$15.55. All fees shall be collected and paid in
22 accordance with this court's order to the Director of the California Department of Corrections
23 and Rehabilitation filed concurrently herewith.

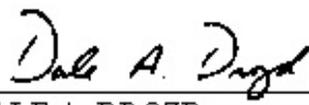
24 3. Plaintiff's complaint is dismissed.

25 4. Plaintiff is granted thirty days from the date of service of this order to file an
26 amended complaint that complies with the requirements of the Civil Rights Act, the Federal

1 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
2 docket number assigned to this case and must be labeled "Amended Complaint"; plaintiff must
3 use the form complaint provided by the court; failure to file an amended complaint in accordance
4 with this order will result in a recommendation that this action be dismissed without prejudice.

5 5. The Clerk of the Court is directed to provide plaintiff with the court's form
6 complaint for a § 1983 action.

7 DATED: July 7, 2010.

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10 _____
11 DALE A. DROZD
12 UNITED STATES MAGISTRATE JUDGE

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