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

HARRISON L. BURTON,

Plaintiff,

No. 2:10-cv-1980-JAM-JFM (PC)

vs.

WARDEN MCDONALD, et al.,

Defendants.

ORDER

_____ /

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

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

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly

1 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust
2 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court
3 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28
4 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 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
19 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355
22 U.S. 41, 47 (1957)). In order to survive dismissal for failure to state a claim a complaint must
23 contain more than "a formulaic recitation of the elements of a cause of action;" it must contain
24 factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic,
25 id. However, "[s]pecific facts are not necessary; the statement [of facts] need only "give the
26 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson

1 v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007) (quoting Bell, 127 S.Ct. at 1964, in turn
2 quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this
3 standard, the court must accept as true the allegations of the complaint in question, Erickson, *id.*,
4 and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416
5 U.S. 232, 236 (1974).

6 In order to have standing to bring a civil rights action, plaintiff “must demonstrate
7 that he has a ‘personal stake in the outcome’” of this case. Darring v. Kincheloe, 783 F.2d 874,
8 877 (9th Cir. 1985) (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)). He must also “‘show that
9 he personally has suffered some actual or threatened injury as a result of the putatively illegal
10 conduct of the defendant,’ and that the injury ‘fairly can be traced to the challenged action’ and
11 ‘is likely to be redressed by a favorable decision.’” *Id.* (quoting Valley Forge Christian College
12 v. Americans United, 454 U.S. 464, 472 (1982)). The alleged injury must be more than a
13 generalized grievance. Hong Kong Supermarket v. Kizer, 830 F.2d 1078, 1081 (9th Cir. 1987).

14 As a general rule, plaintiff may not assert the rights of third parties. An exception
15 to that rule is recognized, however, where the plaintiff (1) has suffered an “injury-in-fact;” (2)
16 has a close relationship to the party whose rights are being asserted; and (3) the third party’s
17 ability to protect his or her own interests is hindered. Wauchope v. U.S. Dept. of State, 985 F.2d
18 1407, 1411 (9th Cir. 1993) (citing Powers v. Ohio, 499 U.S. 400, 411 (1991)).

19 Here, plaintiff raises a variety of allegations of mistreatment of inmates working
20 as culinary workers at High Desert State Prison. His complaint contains no allegations which
21 demonstrate that he has suffered actual or threatened injury from the events complained of policy
22 at issue. Furthermore, although plaintiff purports to represent the rights of culinary workers,
23 there is no allegation that plaintiff has suffered any injury-in-fact or that other culinary workers
24 are unable to represent themselves.

25 For the foregoing reasons, plaintiff has failed to allege facts sufficient to
26 demonstrate that he has standing to bring this litigation. It is not clear, however, that this defect

1 could not be cured by amendment. Accordingly, plaintiff's complaint will be dismissed with
2 leave to amend.

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

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

20 Plaintiff has moved for appointment of counsel. The United States Supreme
21 Court has ruled that district courts lack authority to require counsel to represent indigent
22 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In
23 certain exceptional circumstances, the court may request the voluntary assistance of counsel
24 pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);
25 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court

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1 does not find the required exceptional circumstances. Plaintiff's motion for the appointment of
2 counsel will therefore be denied.

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

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

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

6 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
7 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
8 Director of the California Department of Corrections and Rehabilitation filed concurrently
9 herewith.

10 3. Plaintiff's complaint is dismissed.

11 4. Within thirty days from the date of this order, plaintiff shall complete the
12 attached Notice of Amendment and submit the following documents to the court:

13 a. The completed Notice of Amendment; and

14 b. An original and one copy of the Amended Complaint.

15 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
16 Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must
17 bear the docket number assigned this case and must be labeled "Amended Complaint"; failure to
18 file an amended complaint in accordance with this order may result in the dismissal of this
19 action.

20 5. Plaintiff's July 26, 2010 motion for appointment of counsel is denied.

21 DATED: August 19, 2010.

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24 UNITED STATES MAGISTRATE JUDGE

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

HARRISON L. BURTON,

Plaintiff,

No. 2:10-cv-1980-JAM-JFM (PC)

vs.

WARDEN MCDONALD, et al.,

NOTICE OF AMENDMENT

Defendants.

_____ /

Plaintiff hereby submits the following document in compliance with the court's
order filed _____:

_____ Amended Complaint

DATED:

Plaintiff