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

JAMES MAURICE DUCKETT,

No. CIV S-10-2185-CMK-P

Plaintiff,

vs.

ORDER

ARAMARK,

Defendant.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
4 allege with at least some degree of particularity overt acts by specific defendants which support
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
6 impossible for the court to conduct the screening required by law when the allegations are vague
7 and conclusory.

8 Plaintiff alleges:

9 I want hot breakfast, lunch, dinner. The meal to be more food and have
10 some tace [sic] to it. I want \$100,000 for pain and suffering from being
hungry and without food.

11 This is the entirety of plaintiff's factual allegations. The court finds that the complaint does not
12 currently state a claim because plaintiff has not alleged how the one named defendant
13 participated in or caused an alleged constitutional violation. Furthermore, it is not entirely clear
14 that plaintiff has been denied adequate food. While he says that he wants hot meals, he does not
15 say which meals, if any, are not being served hot. He also says that he seeks damages for being
16 hungry, but does not state on which occasions, if any, he was denied all food and forced to go
17 hungry.

18 Because it is possible that the deficiencies identified in this order may be cured by
19 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire
20 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
21 informed that, as a general rule, an amended complaint supersedes the original complaint. See
22 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
23 amend, all claims alleged in the original complaint which are not alleged in the amended
24 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
25 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make
26 plaintiff's amended complaint complete. See Local Rule 15-220. An amended complaint must

1 be complete in itself without reference to any prior pleading. See id.

2 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
3 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
4 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
5 each named defendant is involved, and must set forth some affirmative link or connection
6 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
7 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

8 Finally, plaintiff is warned that failure to file an amended complaint within the
9 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
10 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
11 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
12 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's complaint is dismissed with leave to amend; and
15 2. Plaintiff shall file an amended complaint within 30 days of the date of
16 service of this order.

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18 DATED: August 25, 2010

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20 **CRAIG M. KELLISON**
21 UNITED STATES MAGISTRATE JUDGE
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