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

SHERMAN JOHNSON, JR.,

Plaintiff,

No. 2:10-cv-2508 JFM (PC)

vs.

SACRAMENTO COUNTY, et al.,

Defendants.

ORDER

_____ /

Plaintiff, a former county jail inmate proceeding pro se, has commenced the above-captioned civil action with a completed form habeas corpus petition under 28 U.S.C. § 2254. Plaintiff has also 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).

Review of the allegations of the initial pleading demonstrate that plaintiff is challenging conditions of his confinement as well as conditions that he allegedly was subjected to following his release from incarceration. In federal court, an application for writ of habeas corpus is appropriate only to determine the legality or duration of a prisoner's custody. See Preiser v. Rodriguez, 411 U.S. 475 (1973). The instant application is thus not cognizable under the federal habeas statute. Accordingly, the court will construe the application as a complaint

1 pursuant to 42 U.S.C. § 1983.¹

2 Plaintiff's in forma pauperis application is not on the form used by this district.
3 Use of the form assists plaintiff to establish and the court to evaluate plaintiff's in forma pauperis
4 status in light of 28 U.S.C. § 1915 (b)(1) and (2). Accordingly, plaintiff's application will be
5 dismissed and plaintiff will be provided the opportunity to submit the application on the
6 appropriate form.

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

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

20 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
21 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic

24 ¹ The initial pleading also contains an allegation that plaintiff was charged with a
25 "trumped up parole violation." Petition, filed September 15, 2010, at 5. A challenge to a parole
26 violation might be cognizable under the federal habeas corpus statute, but it is apparent from the
allegations of the pleading before this court that plaintiff has not exhaust state court remedies
with respect to any such challenge.

1 Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355
2 U.S. 41, 47 (1957)). In order to survive dismissal for failure to state a claim a complaint must
3 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain
4 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,
5 id. However, “[s]pecific facts are not necessary; the statement [of facts] need only “give the
6 defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” Erickson
7 v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007) (quoting Bell, 127 S.Ct. at 1964, in turn
8 quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this
9 standard, the court must accept as true the allegations of the complaint in question, Erickson, id.,
10 and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416
11 U.S. 232, 236 (1974).

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

22 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
23 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See
24 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
25 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
26 there is some affirmative link or connection between a defendant’s actions and the claimed

1 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
2 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
3 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
4 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

13 1. Plaintiff's application to proceed in forma pauperis is dismissed without
14 prejudice.

15 2. The Clerk of the Court is directed to send plaintiff a new Application to
16 Proceed In Forma Pauperis By a Prisoner.

17 3. Plaintiff shall submit, within thirty days from the date of this order, a
18 completed application to proceed in forma pauperis on the form provided with this order.
19 Plaintiff's failure to comply with this order may result in the dismissal of this action without
20 prejudice.

21 4. Plaintiff's complaint is dismissed.

22 5. The Clerk of the Court is directed to send plaintiff the court's form civil rights
23 complaint and accompanying instructions.

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

26 a. The completed Notice of Amendment; and

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

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

DATED: October 18, 2010.


UNITED STATES MAGISTRATE JUDGE

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

SHERMAN JOHNSON, JR.,

Plaintiff,

No. 2:10-cv-2508 JFM (PC)

vs.

SACRAMENTO COUNTY, et al.,

NOTICE OF AMENDMENT

Defendants.

_____ /

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

In Forma Pauperis Application

Amended Complaint

DATED:

Plaintiff