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

KENNETH SMITH,

Plaintiff,

No. 2: 10-cv-2561 KJN P

vs.

C.D.C. PAROLE DIVISION, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a former state prisoner proceeding without counsel. 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 pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

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.

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

1 28 U.S.C. § 1915A(b)(1),(2).

2 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
3 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
4 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
5 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
6 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
7 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
8 Cir. 1989); Franklin, 745 F.2d at 1227.

9 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and  
10 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
11 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
12 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47  
13 (1957)). In order to survive dismissal for failure to state a claim, a complaint must contain more  
14 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
15 allegations sufficient “to raise a right to relief above the speculative level.” Id. However,  
16 “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the defendant fair  
17 notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v. Pardus, 551  
18 U.S. 89, 93 (2007) (quoting Bell Atlantic Corp., 550 U.S. at 555) (citations and internal  
19 quotations marks omitted). In reviewing a complaint under this standard, the court must accept  
20 as true the allegations of the complaint in question, id., and construe the pleading in the light  
21 most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

22 Although not entirely clear, it appears that the named defendants are Parole Agent  
23 Williams and Dr. Zake. Plaintiff alleges that on February 25, 2001, defendants forced him to  
24 take medication against his will at the North B Street Sacramento Parole Region office. Plaintiff  
25 appears to claim that defendants threatened him, possibly with filing a parole violation, if he did  
26 not take the medication.

1 Plaintiff does not state the relief he seeks as required by Federal Rule of Civil  
2 Procedure 8. For example, plaintiff does not state whether he seeks money damages, injunctive  
3 relief or both. For this reason, the complaint is dismissed with leave to amend.

4 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
5 conditions about which he complains resulted in a deprivation of plaintiff's constitutional rights.  
6 Rizzo v. Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms  
7 how each named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983  
8 unless there is some affirmative link or connection between a defendant's actions and the  
9 claimed deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy,  
10 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official  
11 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,  
12 268 (9th Cir. 1982).

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

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

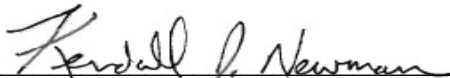
- 22 1. Plaintiff's request for leave to proceed in forma pauperis (Dkt. No. 7) is  
23 granted.
- 24 2. Plaintiff's complaint is dismissed.
- 25 3. Within thirty days from the date of this order, plaintiff shall complete the  
26 attached Notice of Amendment and submit the following documents to the court:

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- a. The completed Notice of Amendment; and
- 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 also bear the docket number assigned to 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: December 8, 2010

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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KENNETH SMITH,

Plaintiff,

No. 2: 10-cv-2561 KJN P

vs.

C.D.C. PAROLE DIVISION, et al.,

NOTICE OF AMENDMENT

Defendants.

\_\_\_\_\_ /

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

\_\_\_\_\_ Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff