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8	IN THE UNITED STATES DISTRICT COURT
9	FOR THE EASTERN DISTRICT OF CALIFORNIA
10	THOMAS G. WILLIAMS,
11	Plaintiff, No. CIV S-10-2769 DAD P
12	VS.
13	ARAMARK FOOD SERVICES,
14	Defendant. <u>ORDER</u>
15	/
16	Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42
17	U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915.
18	This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule
19	302 and 28 U.S.C. § 636(b)(1).
20	Plaintiff has submitted an in forma pauperis application that makes the showing
21	required by 28 U.S.C. § 1915(a). Accordingly, plaintiff will be granted leave to proceed in
22	forma pauperis.
23	Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. <u>See</u>
24	28 U.S.C. §§ 1914(a) & 1915(b)(1). An initial partial filing fee of \$8.50 will be assessed by this
25	order. <u>See</u> 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate
26	agency to collect the initial partial filing fee from plaintiff's prison trust account and forward it
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to the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of
twenty percent of the preceding month's income credited to plaintiff's prison trust account.
These payments will be collected and forwarded by the appropriate agency to the Clerk of the
Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in
full. See 28 U.S.C. § 1915(b)(2).

SCREENING REQUIREMENT

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The court is required to screen complaints brought by prisoners seeking relief
against a governmental entity or an officer or employee of a governmental entity. See 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. See
28 U.S.C. § 1915A(b)(1) & (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in
fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 122728 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
indisputably meritless legal theory or where the factual contentions are clearly baseless.
<u>Neitzke</u>, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however
inartfully pleaded, has an arguable legal and factual basis. <u>See Jackson v. Arizona</u>, 885 F.2d
639, 640 (9th Cir. 1989); <u>Franklin</u>, 745 F.2d at 1227.

Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" <u>Bell</u>
<u>Atlantic Corp. v. Twombly</u>, 550 U.S. 544, 555 (2007) (quoting <u>Conley v. Gibson</u>, 355 U.S. 41,
47 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must
contain more than "a formulaic recitation of the elements of a cause of action;" it must contain
factual allegations sufficient "to raise a right to relief above the speculative level." <u>Bell Atlantic</u>,

550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the 1 2 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all 3 4 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). 5 The Civil Rights Act under which this action was filed provides as follows: Every person who, under color of [state law] ... subjects, or 6 causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the 7 Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 8 9 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the 10 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See 11 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 12 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the 13 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or 14 omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). 15 16 Moreover, supervisory personnel are generally not liable under § 1983 for the 17 actions of their employees under a theory of respondeat superior and, therefore, when a named 18 defendant holds a supervisorial position, the causal link between him and the claimed 19 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 20 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory 21 allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). 22 23 **PLAINTIFF'S COMPLAINT** 24 In the present case, plaintiff has identified Aramark Food Services as the sole 25 defendant. In his complaint, plaintiff alleges that the named defendant failed to provide him and 26 his fellow inmates with meals that comport with minimum daily nutritional requirements while 3

he was incarcerated at the Solano County Jail. In plaintiff's view, defendant Aramark Food
 Services has violated his rights under the Eighth Amendment and the Fourteenth Amendment
 Equal Protection Clause. In terms of relief, plaintiff requests monetary damages. (Compl.
 Attach.)

DISCUSSION

The allegations of plaintiff's complaint are so vague and conclusory that the court 6 7 is unable to determine whether the current action is frivolous or fails to state a claim for relief. 8 The complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2). 9 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to 10 the defendants and must allege facts that support the elements of the claim plainly and 11 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts which defendants engaged in that 12 13 support his claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R. 14 Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an 15 amended complaint.

16 If plaintiff chooses to file an amended complaint, he must allege facts 17 demonstrating how the conditions complained of resulted in a deprivation of his federal 18 constitutional or statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The 19 amended complaint must allege in specific terms how each named defendant was involved in the 20 deprivation of plaintiff's rights. There can be no liability under 42 U.S.C. § 1983 unless there is 21 some affirmative link or connection between a defendant's actions and the claimed deprivation. 22 <u>Rizzo v. Goode</u>, 423 U.S. 362 (1976); <u>May v. Enomoto</u>, 633 F.2d 164, 167 (9th Cir. 1980); 23 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 24 25 F.2d 266, 268 (9th Cir. 1982).

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Plaintiff is advised that, if he elects to proceed with this action by filing an
amended complaint, he will need to clarify why he has named Aramark Food Services as a
defendant. Plaintiff has not allege facts linking defendant Aramark to any harmful conduct.
Rather, plaintiff merely alleges that the company delivered meals as ordered by the Solano
County Jail. As noted above, the Civil Rights Act requires there be an actual connection or link
between the actions of the defendants and the deprivation alleged to have been suffered by
plaintiff.

8 Plaintiff is also advised of the following legal standards that appear to govern his 9 claims. To the extent that he wishes to proceed on an Eighth Amendment claim, he is advised 10 that the "unnecessary and wanton infliction of pain" constitutes cruel and unusual punishment 11 prohibited by the United States Constitution. Whitley v. Albers, 475 U.S. 312, 319 (1986). See also Ingraham v. Wright, 430 U.S. 651, 670 (1977); Estelle v. Gamble, 429 U.S. 97, 105-06 12 13 (1976). However, neither accident nor negligence constitutes cruel and unusual punishment, 14 because "[i]t is obduracy and wantonness, not inadvertence or error in good faith, that 15 characterize the conduct prohibited by the Cruel and Unusual Punishments Clause." Whitley, 16 475 U.S. at 319. What is needed to show unnecessary and wanton infliction of pain "varies 17 according to the nature of the alleged constitutional violation." Hudson v. McMillian, 503 U.S. 1, 5 (1992) (citing Whitley, 475 U.S. at 320). Plaintiff must allege facts showing that objectively 18 19 he suffered a sufficiently serious deprivation and that subjectively each defendant had a culpable 20 state of mind in allowing or causing the plaintiff's deprivation to occur. Wilson v. Seiter, 501 21 U.S. 294, 298-99 (1991). If plaintiff elects to file an amended complaint, he will need to allege 22 how smaller portions of food denied him "the minimal civilized measure of life's necessities." 23 Rhodes v. Chapman, 452 U.S. 337, 347 (1981).

To the extent that plaintiff wishes to proceed on a Fourteenth Amendment equal
protection claim, he is advised that the Equal Protection Clause "is essentially a direction that all
persons similarly situated should be treated alike." <u>City of Cleburne, Tex. v. Cleburne Living</u>

1 Center, 473 U.S. 432, 439 (1985). To state a cognizable claim under the Equal Protection 2 Clause, a prisoner "must plead intentional unlawful discrimination or allege facts that are at least 3 susceptible of an inference of discriminatory intent." Byrd v. Maricopa County Sheriff's Dep't, 4 565 F.3d 1205, 1212 (9th Cir. 2009) (quoting Monteiro v. Tempe Union High School District, 5 158 F.3d 1022, 1026 (9th Cir. 1998)). "Intentional discrimination means that a defendant acted at least in part because of a plaintiff's protected status." Serrano v. Francis, 345 F.3d 1071, 1082 6 7 (9th Cir. 2003) (emphasis in original) (quoting Maynard v. City of San Jose, 37 F.3d 1396, 1404 8 (9th Cir. 1994)). If plaintiff elects to file an amended complaint, he will need to allege facts 9 clarifying how he was treated differently from similarly situated inmates. In his original 10 complaint, plaintiff seems to acknowledge that he and all of his fellow inmates at the Solano 11 County Jail received the same portions of food, which plaintiff claims was insufficient.

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

CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

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1. Plaintiff's application to proceed in forma pauperis (Doc. No. 2) is granted.

22 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
23 Plaintiff is assessed an initial partial filing fee of \$8.50. All fees shall be collected and paid in
24 accordance with this court's order to the Director of the California Department of Corrections
25 and Rehabilitation filed concurrently herewith.

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3. Plaintiff's complaint is dismissed.

1	4. Plaintiff is granted thirty days from the date of service of this order to file an
2	amended complaint that complies with the requirements of the Civil Rights Act, the Federal
3	Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
4	docket number assigned to this case and must be labeled "Amended Complaint"; failure to file
5	an amended complaint in accordance with this order will result in a recommendation that this
6	action be dismissed without prejudice.
7	5. The Clerk of the Court is directed to send plaintiff the court's form for filing a
8	civil rights action.
9	DATED: July 14, 2011.
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11	Dale A. Droget
12	DAD:9 UNITED STATES MAGISTRATE JUDGE will2769.14
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