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

DENNIS MERRIDA,

No. CIV S-10-2865-LKK-CMK-P

Plaintiff,

vs.

ORDER

ARAMARK FOOD SERVICE  
PROVIDER, et al.,

Defendants.

\_\_\_\_\_ /

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).

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

#### 10 I. PLAINTIFF'S ALLEGATIONS

11 Plaintiff names Aramark Food Service Provider and Solano County as defendants  
12 to this action. Plaintiff alleges:

13 Aramark along with Solano County which includes its Sheriff's  
14 Department Custom Division has and continues too [sic] intentionally and  
15 malisciously [sic] deprive me and all the inmates that are presently housed  
16 under the direct control of said Sheriff's Dept. within the Solano County  
17 Justice Center which is Located at 500 Union Ave. Fairfield, CA. Our  
18 daily nutritional intake requirement that is mandated by standard for the  
19 minimum daily diets of vitamins, iron, protein, and minerals which are  
20 fixed by law and contained within the Title 15 minimum jail standards  
21 specifically under Article 12; Food. As a result of this deprivation myself  
22 and all the inmates have been denied the proper diet that is mandated by  
23 local, state, federal law and their policies. The deprivation is caused and  
24 due to Aramark intending to inflate and raise their profits in a separate  
25 business operation which they also own and operate by contract in the  
26 Solano County Jail. This operation that is labled [sic] under the heading  
Facility Commisary and/or Canteen. Aramark along with the Custody  
Division of the Sheriff's Dept. have severely reduced the daily portions  
and alotments [sic] of meals which they are mandated by law to serve.  
This intentional and maliscious [sic] endeavor for purposes of financial  
gain in their separate business operation directly affects each individual  
incarcerated in said facility. . . .

24 Plaintiff states that these facts give rise to claims under the Eighth Amendment based on  
25 inadequate food and under the Fourteenth Amendment based on denial of equal protection.

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1 **II. DISCUSSION**

2 Plaintiff's complaint suffers from a number of flaws, discussed below.

3 **A. Equal Protection**

4 Equal protection claims arise when a charge is made that similarly situated  
5 individuals are treated differently without a rational relationship to a legitimate state purpose.  
6 See San Antonio School District v. Rodriguez, 411 U.S. 1 (1972). Prisoners are protected from  
7 invidious discrimination based on race. See Wolff v. McDonnell, 418 U.S. 539, 556 (1974).  
8 Racial segregation is unconstitutional within prisons save for the necessities of prison security  
9 and discipline. See Cruz v. Beto, 405 U.S. 319, 321 (1972) (per curiam). Prisoners are also  
10 protected from intentional discrimination on the basis of their religion. See Freeman v. Arpaio,  
11 125 F.3d 732, 737 (9th Cir. 1997). Equal protection claims are not necessarily limited to racial  
12 and religious discrimination. See Lee v. City of Los Angeles, 250 F.3d 668, 686-67 (9th Cir.  
13 2001) (applying minimal scrutiny to equal protection claim by a disabled plaintiff because the  
14 disabled do not constitute a suspect class) see also Tatum v. Piler, 2007 WL 1720165 (E.D. Cal.  
15 2007) (applying minimal scrutiny to equal protection claim based on denial of in-cell meals  
16 where no allegation of race-based discrimination was made); Hightower v. Schwarzenegger,  
17 2007 WL 732555 (E.D. Cal. March 19, 2008).

18 In order to state a § 1983 claim based on a violation of the Equal Protection  
19 Clause of the Fourteenth Amendment, a plaintiff must allege that defendants acted with  
20 intentional discrimination against plaintiff, or against a class of inmates which included plaintiff,  
21 and that such conduct did not relate to a legitimate penological purpose. See Village of  
22 Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (holding that equal protection claims may be  
23 brought by a "class of one"); Reese v. Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 740 (9th Cir.  
24 2000); Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998); Federal Deposit Ins. Corp. v.  
25 Henderson, 940 F.2d 465, 471 (9th Cir. 1991); Lowe v. City of Monrovia, 775 F.2d 998, 1010  
26 (9th Cir. 1985).

1 Here, plaintiff states that the facts alleged in the complaint give rise to an equal  
2 protection claim. The court does not agree. In particular, plaintiff does not allege that he is  
3 being treated differently than similarly situated individuals. In fact, plaintiff specifically alleges  
4 that he and all inmates at the Solano County Jail are experiencing the same problems with their  
5 food. Plaintiff's complaint does not state any facts giving rise to an equal protection claim.

6 **B. Inadequate Food**

7 The gravamen of plaintiff's complaint is that inmates at the Solano County Jail  
8 are not receiving constitutionally adequate food. Plaintiff has not, however, plead facts which  
9 would indicate that the named defendants are the proper defendants to this action.

10 1. Aramark

11 According to the complaint, Aramark is an outside company that contracts with  
12 the jail to provide food service. Generally, private parties are not considered to be acting under  
13 color of state law for purposes of liability under § 1983. See Price v. Hawai'i, 939 F.2d 702,  
14 707-08 (9th Cir. 1991). It is possible for a private party to act under color of state law where  
15 conspiracy with state officials is alleged. See Tower v. Glover, 467 U.S. 914, 920 (1984). Here,  
16 while plaintiff names Solano County as a defendant, plaintiff does not name any individual state  
17 actors, such as a correctional officer, warden, etc., with whom Aramark, or anyone acting for  
18 Aramark, could have formed an agreement to violate plaintiff's constitutional rights. Therefore,  
19 as the complaint is currently framed, it is impossible for plaintiff to establish the conspiracy  
20 required to maintain an action against Aramark.

21 2. Solano County

22 Municipalities and other local government units are among those "persons" to  
23 whom § 1983 liability applies. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978).  
24 Counties and municipal government officials are also "persons" for purposes of § 1983. See id.  
25 at 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local  
26 government unit, however, may not be held responsible for the acts of its employees or officials

1 under a respondeat superior theory of liability. See Bd. of County Comm'rs v. Brown, 520 U.S.  
2 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not  
3 of the actions of its employees or officers. See id. To assert municipal liability, therefore, the  
4 plaintiff must allege that the constitutional deprivation complained of resulted from a policy or  
5 custom of the municipality. See id. A claim of municipal liability under § 1983 is sufficient to  
6 withstand dismissal even if it is based on nothing more than bare allegations that an individual  
7 defendant's conduct conformed to official policy, custom, or practice. See Karim-Panahi v. Los  
8 Angeles Police Dep't, 839 F.2d 621, 624 (9th Cir. 1988).

9 In this case, plaintiff does not allege that inadequate food is the result of any  
10 policy, custom, or practice of Solano County. Rather, it appears that plaintiff alleges that the  
11 inadequate food service is due to misconduct on the part of Aramark. Absent allegations of  
12 custom, policy, or practice of the municipality, plaintiff cannot maintain an action against Solano  
13 County.

### 14 15 **III. CONCLUSION**

16 Because it is possible that the deficiencies identified in this order may be cured by  
17 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire  
18 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is  
19 informed that, as a general rule, an amended complaint supersedes the original complaint. See  
20 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to  
21 amend, all claims alleged in the original complaint which are not alleged in the amended  
22 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if  
23 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make  
24 plaintiff's amended complaint complete. See Local Rule 15-220. An amended complaint must  
25 be complete in itself without reference to any prior pleading. See id.

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

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

12           Accordingly, IT IS HEREBY ORDERED that:

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

16  
17 DATED: November 10, 2010

18   
19 **CRAIG M. KELLISON**  
20 UNITED STATES MAGISTRATE JUDGE