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

WILLIAM CORDOBA,

Plaintiff,

No. CIV S-10-2944 DAD P

vs.

KATHLEEN L. DICKINSON et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. On November 1, 2010, the United States District Court for the Northern District of California transferred the case to this court, which has proper venue. Prior to transferring the case, District Judge Armstrong granted plaintiff leave to proceed in forma pauperis.

**SCREENING REQUIREMENT**

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).

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

8 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and  
9 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
10 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic  
11 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47  
12 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must  
13 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain  
14 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,  
15 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
16 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
17 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
18 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

19 The Civil Rights Act under which this action was filed provides as follows:

20 Every person who, under color of [state law] . . . subjects, or causes  
21 to be subjected, any citizen of the United States . . . to the  
22 deprivation of any rights, privileges, or immunities secured by the  
23 Constitution . . . shall be liable to the party injured in an action at  
24 law, suit in equity, or other proper proceeding for redress.

25 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
26 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
(1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the



1 claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P.  
2 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an  
3 amended complaint.

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

14           Insofar as plaintiff wishes to proceed in this action on an Eighth Amendment  
15 failure to protect claim, he is advised that "prison officials have a duty . . . to protect prisoners  
16 from violence at the hands of other prisoners." Farmer, 511 U.S. at 833. "Being violently  
17 assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offense  
18 against society.'" Id. at 834. However, prison officials do not incur constitutional liability for  
19 every injury suffered by a prisoner. Id. A prison official violates the Eighth Amendment "only if  
20 he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to  
21 take reasonable measures to abate it." Id. at 847. Under this standard, a prison official must  
22 have a "sufficiently culpable state of mind," one of deliberate indifference to the inmate's health  
23 or safety. Id. at 834. If plaintiff elects to file an amended complaint, he must allege facts  
24 demonstrating how each defendant's actions rose to the level of "deliberate indifference."

25           As to the defendants plaintiff has identified in his original complaint, plaintiff is  
26 advised that it is not clear to the court why he has named Warden Dickinson as a defendant in

1 this action. Specifically, plaintiff has not alleged any wrongdoing by Warden Dickinson in his  
2 complaint. If plaintiff elects to file an amended complaint naming Warden Dickinson as a  
3 defendant, he must allege facts demonstrating how her actions rose to the level of “deliberate  
4 indifference” to his health and safety. Plaintiff is cautioned that “prison officials who lacked  
5 knowledge of a risk cannot be said to have inflicted punishment. . . .” Id. at 844.

6 In addition, plaintiff is advised that the Eleventh Amendment serves as a  
7 jurisdictional bar to suits brought by private parties against a state or state agency unless the state  
8 or the agency consents to such suit. See Quern v. Jordan, 440 U.S. 332, 340 (1979); Alabama v.  
9 Pugh, 438 U.S. 781, 782 (1978); Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982).  
10 In the instant case, CMF has not consented to suit. Accordingly, if plaintiff names CMF again as  
11 a defendant in his amended complaint, the court will likely dismiss this entity as a defendant.

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

19 **CONCLUSION**

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. Plaintiff’s complaint is dismissed.  
22 2. Plaintiff is granted thirty days from the date of service of this order to file an  
23 amended complaint that complies with the requirements of the Civil Rights Act, the Federal

24 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the  
25 docket number assigned to this case and must be labeled “Amended Complaint”; failure to file an

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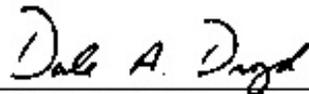
1 amended complaint in accordance with this order will result in a recommendation that this action  
2 be dismissed without prejudice.

3 3. The Clerk of the Court is directed to send plaintiff the court's form for filing a  
4 civil rights action.

5 DATED: April 1, 2011.

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE