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

BART LYONS,

Plaintiff,

No. 2:11-cv-0268 KJN P

vs.

FOLSOM MERCY HOSPITAL, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a Yolo County Jail inmate who proceeds 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 and supporting documents that make the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's prison

1 trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to
2 make monthly payments of twenty percent of the preceding month's income credited to
3 plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to
4 the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing
5 fee is paid in full. 28 U.S.C. § 1915(b)(2).

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

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

19 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
20 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
21 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
22 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
23 (1957)). In order to survive dismissal for failure to state a claim, a complaint must contain more
24 than "a formulaic recitation of the elements of a cause of action;" it must contain factual
25 allegations sufficient "to raise a right to relief above the speculative level." Id. However,
26 "[s]pecific facts are not necessary; the statement [of facts] need only 'give the defendant fair

1 notice of what the . . . claim is and the grounds upon which it rests.” Erickson v. Pardus, 551
2 U.S. 89, 93 (2007) (quoting Bell Atlantic Corp., 550 U.S. at 555) (citations and internal
3 quotations marks omitted). In reviewing a complaint under this standard, the court must accept
4 as true the allegations of the complaint in question, id., and construe the pleading in the light
5 most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

6 In his complaint, plaintiff seeks to challenge the circumstances of his arrest, on
7 January 26, 2010, by officers with the Folsom Police Department (“FPD”), and plaintiff’s
8 attendant transport to Folsom Mercy Hospital (“FMH”), due to a drug overdose. Plaintiff alleges
9 that defendant FPD Officer Browning video-recorded plaintiff without his permission, “for
10 purposes of ‘showing high school students someone can go crazy from using meth. . .’” (Dkt. No.
11 1 at 3.) Plaintiff alleges that neither FPD staff nor FMH staff stopped Browning, inferring that
12 each had a duty to do so. Plaintiff alleges that, pursuant to his arrest, FPD officers made
13 inappropriate sexual comments to plaintiff’s girlfriend, and falsely stated to plaintiff’s girlfriend
14 and other individuals in the home (apparently minors) that plaintiff had burglarized homes.
15 Officers seized electronics (later returned) that were allegedly stolen. Plaintiff alleges that
16 officers “tore up” plaintiff’s home during the arrest and seizure of property.

17 Plaintiff names as defendants Browning and all other FPD officers (“names
18 unknown”) involved in plaintiff’s arrest, the Folsom Police Department itself, as well as Folsom
19 Mercy Hospital and all staff (“names unknown”) who permitted the videotaping. Plaintiff seeks
20 an order of court requiring Browning to turn over all copies of the video, and to name all
21 individuals who viewed the video or may have a copy of the video, and seeks monetary damages
22 against Browning, both the FPD and FMH, and each implicated FPD and FMH staff member.

23 Plaintiff only generally alleges that his rights have been violated under 42 U.S.C.
24 § 1983, “under color of state law like Ruby Ridge.” (Dkt. No. 1, at 3 (emphasis deleted).)
25 Plaintiff fails to identify which federal constitutional provisions or statutes support his claims,
26 with the exception that plaintiff alleges that the challenged videotaping constitutes a “HIPAA

1 violation.” (Id.) However, the Health Insurance Portability and Accountability Act of 1996
2 (“HIPAA”), Pub. L. 104-191, 110 Stat. 1936 (1996) (codified in Titles 18, 26 and 42 of the
3 United States Code), does not provide for a private right of action. Webb v. Smart Document
4 Solutions, LLC, 499 F.3d 1078, 1082 (9th Cir. 2007) (citing 65 Fed. Reg. 82601 (Dec. 28, 2000));
5 Acara v. Banks, 470 F.3d 569, 571 (5th Cir. 2006).

6 Plaintiff appears to seek to bring this action on behalf of himself, his girlfriend,
7 and minor children. While a non-attorney may represent himself in a lawsuit, he has no authority
8 to appear as an attorney for another adult or for a child. Moreover, while plaintiff’s girlfriend can
9 represent herself, only a lawyer can bring an action on behalf of a minor child. Johns v. County
10 of San Diego, 114 F.3d 874, 877 (9th Cir. 1997).

11 Finally, plaintiff states that he has not pursued these matters in the grievance
12 process offered by his place of incarceration because the “[p]arties involved have nothing to do
13 with [the] holding facilit[y]’s grievance process. . .” (Dkt. No. 1, at 2.) However, plaintiff is
14 cautioned that exhaustion of available administrative remedies is a prerequisite to filing a federal
15 civil rights action.¹ 42 U.S.C. § 1997e(a).

16 The court finds the allegations in plaintiff’s complaint so vague that it is unable to
17 determine whether the current action is frivolous or fails to state a claim for relief, particularly as
18 a prisoner civil rights action which is generally limited to challenging the conditions of a
19 prisoner’s confinement. The court has determined that the complaint does not contain a short
20 and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a

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22 ¹ Plaintiff references his attempts to file what appears to be a claim under the California
23 Tort Claims Act. (Dkt. No. 1, at 5.) The California Tort Claims Act requires that a state tort
24 claim against a public entity or its employees be presented to the California Victim
25 Compensation and Government Claims Board within six months after the cause of action
26 accrued. Cal. Govt. Code §§ 905.2, 910, 911.2, 945.4, 950-950.2. Presentation of a written
claim and action on, or rejection of, the claim are conditions precedent to suit. State v. Superior
Court of Kings County (Bodde) (2004) 32 Cal.4th 1234, 1245; Mangold v. California Pub. Utils.
Comm’n, 67 F.3d 1470, 1477 (9th Cir. 1995). However, compliance with the California Tort
Claims Act does not satisfy the prisoner litigation exhaustion requirement set forth in 42 U.S.C.
§ 1997e(a), which is a precondition to a prisoner pursuing a civil rights action in federal court.

1 flexible pleading policy, a complaint must give fair notice and state the elements of the claim
2 plainly and succinctly. Jones v. Cmty Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).
3 Plaintiff must allege with at least some degree of particularity overt acts which defendants
4 engaged in that support plaintiff's identified legal claims. Id. Because plaintiff has failed to
5 comply with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The
6 court will, however, grant leave to file an amended complaint.

7 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
8 conditions about which he complains resulted in a deprivation of his own constitutional rights.
9 Rizzo v. Goode, 423 U.S. 362, 371 (1976). The complaint must allege in specific terms how
10 each named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless
11 there is some affirmative link or connection between a defendant's actions and the claimed
12 deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588
13 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official
14 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
15 268 (9th Cir. 1982).

16 If plaintiff elects to pursue this action by filing an amended complaint, he is
17 advised that all defendants must be identified in the caption of his pleading and that all
18 defendants must be named, with position and place of employment, in the section of the form
19 designated for that purpose. Use of "unnamed" or "Doe" defendants is disfavored. Gillespie v.
20 Civiletti, 629 F.2d 637, 642 (9th Cir.1980). While, in some circumstances, the discovery process
21 may be used to obtain the names of unidentified defendants, this is appropriate only when the
22 complaint makes clear factual allegations and cognizable legal claims against a particular "Doe"
23 defendant. However, the court cannot order service of a complaint on defendants who are not
24 identified by name.

25 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
26 order to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended

1 complaint be complete in itself without reference to any prior pleading. This requirement exists
2 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
3 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
4 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
5 original complaint, each claim and the involvement of each defendant must be sufficiently
6 alleged.

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

8 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

9 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

10 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
11 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
12 Yolo County Sheriff filed concurrently herewith.

13 3. Plaintiff's complaint is dismissed.

14 4. Within thirty days from the date of this order, plaintiff may complete the
15 attached Notice of Amendment and submit the following documents to the court:

16 a. The completed Notice of Amendment; and

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

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

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1 5. The Clerk of Court is directed to send plaintiff: (1) one copy of plaintiff's file-
2 endorsed original complaint (Dkt. No. 1) (per plaintiff's request), and (2) one blank "Form to be
3 Used by a Prisoner in Filing a Complaint under the Civil Rights Act, 42 U.S.C. § 1983."

4 DATED: February 11, 2011

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

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IN THE UNITED STATES DISTRICT COURT
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BART LYONS,

Plaintiff,

No. 2:11-cv-0268 KJN P

vs.

FOLSOM MERCY HOSPITAL, et al.,

Defendants.

NOTICE OF AMENDMENT

_____ /

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

_____ Amended Complaint

Date

Plaintiff