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

CD ALSTON,

Plaintiff,

No. CIV S-11-678 KJM CMK (TEMP) PS

vs.

CITY OF ELK GROVE, et al.,

Defendants.

ORDER

_____/

Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302(c)(21).

Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(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, 1227-28

1 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
3 490 U.S. at 327.

4 In order to avoid dismissal for failure to state a claim a complaint must contain
5 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements
6 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other
7 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
8 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a
9 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.
10 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
11 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129
12 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be
13 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200
14 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
15 Rhodes, 416 U.S. 232, 236 (1974).

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

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1 If plaintiff chooses to amend the complaint, plaintiff must set forth the
2 jurisdictional grounds upon which the court’s jurisdiction depends. Federal Rule of Civil
3 Procedure 8(a). Further, plaintiff must demonstrate how the conduct complained of has resulted
4 in a deprivation of plaintiff’s federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

5 In the complaint, plaintiff alleges claims arising out of an allegedly unlawful
6 arrest. Plaintiff contends she is currently being prosecuted for charges arising out of that arrest.
7 It appears plaintiff’s claims may be barred under Heck v. Humphrey, 512 U.S. 477 (1994). In
8 Heck, the United States Supreme Court held that a suit for damages on a civil rights claim
9 concerning an allegedly unconstitutional conviction or imprisonment cannot be maintained
10 absent proof “that the conviction or sentence has been reversed on direct appeal, expunged by
11 executive order, declared invalid by a state tribunal authorized to make such determination, or
12 called into question by a federal court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254.”
13 Heck, 512 U.S. at 486.

14 Plaintiff is further advised that the Civil Rights Act provides as follows:

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

20 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
21 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
22 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
23 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
24 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or
25 omits to perform an act which he is legally required to do that causes the deprivation of which
26 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

 Moreover, supervisory personnel are generally not liable under § 1983 for the
actions of their employees under a theory of respondeat superior and, therefore, when a named

1 defendant holds a supervisory position, the causal link between him and the claimed
2 constitutional violation must be specifically alleged. See *Fayle v. Stapley*, 607 F.2d 858, 862
3 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
4 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
5 in civil rights violations are not sufficient. See *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th
6 Cir. 1982).

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

14 Plaintiff has filed a motion to proceed under a pseudonym. The nature of the
15 claims raised in the instant action are not of such an unusual nature that plaintiff should be
16 allowed to proceed anonymously. See, e.g. *Roe v. Wade*, 410 U.S. 113 (1973) (challenge to
17 criminal abortion law); *United States v. Doe*, 655 F.2d 920 (9th Cir. 1980) (use of pseudonym
18 allowed because it might prevent dissemination of information within the prison with respect to
19 appellant's cooperation with the Government). Plaintiff's motion will therefore be denied.

20 Plaintiff also requests to correspond by e-mail. Plaintiff does not provide an e-
21 mail address and has not set forth circumstances warranting an exception to the local rule which
22 provides that persons appearing pro se may not utilize electronic filing. See Local Rule
23 133(b)(2).

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

- 25 1. Plaintiff's request to proceed in forma pauperis (dkt. no. 2) is granted;
- 26 2. Plaintiff's complaint is dismissed;

1 3. 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 Federal Rules of Civil Procedure,
3 and the Local Rules of Practice; the amended complaint must bear the docket number assigned
4 this case and must be labeled "Amended Complaint"; plaintiff must file an original and two
5 copies of the amended complaint; failure to file an amended complaint in accordance with this
6 order will result in a recommendation that this action be dismissed;

7 4. Plaintiff's motion to proceed under pseudonym (dkt. no. 5) is denied; and

8 5. Plaintiff's motion to correspond through e-mail (dkt. no. 6) is denied.

9
10 DATED: June 6, 2011

11 
12 **CRAIG M. KELLISON**
13 UNITED STATES MAGISTRATE JUDGE

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