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

ADAM REIDE CRAVER,

Plaintiff,

No. 11-cv-1570-CKD P

vs.

TRACI A. BREWER, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983 and 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 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes 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). Plaintiff is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month’s income credited to plaintiff’s prison trust account. These payments shall be collected and forwarded by the appropriate agency

1 to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the  
2 filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

3           The court is required to screen complaints brought by prisoners seeking relief  
4 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
5 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised  
6 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
7 granted, or that seek monetary relief from a defendant who is immune from such relief. 28  
8 U.S.C. § 1915A(b)(1),(2).

9           A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
11 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
15 Cir. 1989); Franklin, 745 F.2d at 1227.

16           A complaint must contain more than a "formulaic recitation of the elements of a  
17 cause of action;" it must contain factual allegations sufficient to "raise a right to relief above the  
18 speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). "The pleading must  
19 contain something more...than...a statement of facts that merely creates a suspicion [of] a legally  
20 cognizable right of action." Id., quoting 5 C. Wright & A. Miller, Federal Practice and Procedure  
21 1216, pp. 235-235 (3d ed. 2004). "[A] complaint must contain sufficient factual matter, accepted  
22 as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, \_\_\_ U.S. \_\_\_, 129  
23 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127 S.Ct. 1955). "A claim has  
24 facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
25 reasonable inference that the defendant is liable for the misconduct alleged." Id.

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1 In reviewing a complaint under this standard, the court must accept as true the  
2 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
3 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
4 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

5 Here, plaintiff’s statement of claim is brief and uninformative. Plaintiff alleges  
6 that defendant Brewer, a social worker, “in her protective custody order wrote that [I] was a  
7 registered sexual offender (290) in her report and submitted it to the prosecution in my case!”  
8 (Doc. No. 1. at 3.) Petitioner does not attempt to explain why this report was erroneous, let alone  
9 why its submission violated a federal constitutional right. Petitioner does not allege that named  
10 defendant Lang, a detective, committed any particular wrongdoing, but merely suggests that Lang  
11 was involved in the “inquiry” that led to Brewer’s report. (Id.)

12 Fed. R. Civ. P 8 sets forth general rules of pleading in the federal courts.  
13 Complaints are required to set a forth (1) the grounds upon which the court’s jurisdiction rests,  
14 (2) a short and plain statement of the claim showing entitlement to relief; and (3) a demand for  
15 the relief plaintiff seeks. All that is required are sufficient allegations to put defendants fairly on  
16 notice of the claims against them. See Conley v. Gibson, 355 U.S. 41, 47 (1957)(abrogated on  
17 another ground by Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)); 5 C. Wright & A.  
18 Miller, Federal Practice and Procedure § 1202 (2d ed. 1990). Rule 8 requires “sufficient  
19 allegations to put defendants fairly on notice of the claims against them.” McKeever v. Block,  
20 932 F.2d 795, 798 (9th Cir. 1991)). Accord Richmond v. Nationwide Cassel L.P., 52 F.3d 640,  
21 645 (7th Cir. 1995) (amended complaint with vague and scanty allegations fails to satisfy the  
22 notice requirement of Rule 8.) Plaintiff’s bare and cursory allegations do not set forth the  
23 grounds for this court’s jurisdiction. Nor do they suffice to put defendants on notice of the  
24 claims against them. Thus, the complaint will be dismissed with leave to amend.

25 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
26 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See

1 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms  
2 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless  
3 there is some affirmative link or connection between a defendant's actions and the claimed  
4 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
5 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
6 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board  
7 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

16 1. Plaintiff's request for leave to proceed in forma pauperis (Doc. No. 2) is  
17 granted.

18 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.  
19 The fee shall be collected and paid in accordance with this court's order to the Director of the  
20 California Department of Corrections and Rehabilitation filed concurrently herewith.

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1           3. The complaint is dismissed for the reasons discussed above, with leave to file  
2 an amended complaint within thirty days from the date of service of this order. Failure to file an  
3 amended complaint will result in a recommendation that the action be dismissed.

4 DATED: August 5, 2011

/s/ Carolyn K. Delaney

5 CAROLYN K. DELANEY  
6 UNITED STATES MAGISTRATE JUDGE  
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