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

JOVAN STRONG,

Plaintiff,

No. 2:11-cv-1916 KJM JFM (PC)

vs.

SOLANO COUNTY
SHERIFF'S DEPARTMENT
(MEDICAL STAFF),

Defendants.

ORDER

_____ /

Plaintiff is a pretrial detainee in a county jail proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed August 1, 2011, plaintiff's complaint was dismissed with leave to file an amended complaint. Plaintiff has now filed an amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 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. 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, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355
12 U.S. 41, 47 (1957)). 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 id. However, “[s]pecific facts are not necessary; the statement [of facts] need only “‘give the
16 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’”” Erickson
17 v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007) (quoting Bell, 127 S.Ct. at 1964, in turn
18 quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this
19 standard, the court must accept as true the allegations of the complaint in question, Erickson, id.,
20 and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416
21 U.S. 232, 236 (1974).

22 Plaintiff alleges generally that the Solano County Sheriff’s Department has failed
23 to provide him with proper medical care. He alleges that he has “repeatedly made request for
24 medical attention” and that he “feel(s) that [he] has been made with deliberate indifference to
25 serious medical needs....” Amended Complaint, filed August 30, 2011, at 4. Plaintiff names two
26 defendants: the Facility Administrator Lt. Rod Marsh, and Dr. James Firman.

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

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

5 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
6 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
7 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
8 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
9 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
10 omits to perform an act which he is legally required to do that causes the deprivation of which
11 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

12 Moreover, supervisory personnel are generally not liable under § 1983 for the
13 actions of their employees under a theory of respondeat superior and, therefore, when a named
14 defendant holds a supervisory position, the causal link between him and the claimed
15 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
16 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
17 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
18 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
19 Cir. 1982).

20 Plaintiff has included Lt. Marsh in this action based solely on his supervisory role
21 as Facility Administrator. See Amended Complaint at 3. For that reason, the amended
22 complaint does not state a cognizable claim for relief against Lt. Marsh.

23 Plaintiff's sole allegation against Dr. Firman “is the head physician of this facility
24 and personally made the final judgments in dealing with my medical issues.” Id. at 4. Although
25 the court can glean that plaintiff is attempting to allege that his constitutional rights are being
26 violated by inadequate medical care, the allegations in plaintiff's amended complaint are so

1 vague and conclusory that it is unable to determine whether the current action is frivolous or fails
2 to state a claim for relief. The court has determined that the amended complaint does not contain
3 a “short and plain statement of the claim showing the pleader is entitled to relief” as required by
4 Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint
5 must give fair notice and state the elements of the claim plainly and succinctly. Jones v.
6 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at
7 least some degree of particularity overt acts which defendants engaged in that support plaintiff's
8 claim. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P.
9 8(a)(2), the amended complaint must be dismissed. The court will, however, grant leave to file a
10 second amended complaint.

11 If plaintiff chooses to file a second amended complaint, plaintiff must demonstrate
12 how the conditions complained of have resulted in a deprivation of plaintiff's constitutional
13 rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the second amended complaint
14 must allege in specific terms how each named defendant is involved. There can be no liability
15 under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's
16 actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto,
17 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).
18 Furthermore, vague and conclusory allegations of official participation in civil rights violations
19 are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

4 1. Plaintiff's amended complaint is dismissed; and

5 2. Within thirty days from the date of this order, plaintiff shall complete the
6 attached Notice of Amendment and submit the following documents to the court:

7 a. The completed Notice of Amendment; and

8 b. An original and one copy of the Second Amended Complaint.

9 Plaintiff's second amended complaint shall comply with the requirements of the Civil Rights
10 Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the second amended
11 complaint must bear the docket number assigned this case and must be labeled "Second
12 Amended Complaint"; failure to file a second amended complaint in accordance with this order
13 may result in the dismissal of this action.

14 DATED: October 11, 2011.

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17 UNITED STATES MAGISTRATE JUDGE

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Plaintiff,

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SOLANO COUNTY
SHERIFF'S DEPARTMENT
(MEDICAL STAFF),

NOTICE OF AMENDMENT

Defendants.

_____ /

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

_____ Second Amended Complaint

DATED:

Plaintiff