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

JOVAN STRONG,

Plaintiff,

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

vs.

SOLANO COUNTY
SHERIFF'S DEPARTMENT
(MEDICAL STAFF),

Defendants.

ORDER

Plaintiff is a county jail inmate proceeding pro se. 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 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). 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 trust account

1 and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly
2 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust
3 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court
4 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28
5 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. 28
11 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 where 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, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355
23 U.S. 41, 47 (1957)). In order to survive dismissal for failure to state a claim a complaint must
24 contain more than "a formulaic recitation of the elements of a cause of action;" it must contain
25 factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic,
26 id. However, "[s]pecific facts are not necessary; the statement [of facts] need only "give the

1 defendant fair notice of what the . . . claim is and the grounds upon which it rests.””” Erickson
2 v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007) (quoting Bell, 127 S.Ct. at 1964, in turn
3 quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this
4 standard, the court must accept as true the allegations of the complaint in question, Erickson, id.,
5 and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416
6 U.S. 232, 236 (1974).

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

17 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
18 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See
19 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must name specific
20 defendants and must allege in specific terms how each named defendant is involved. There can
21 be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection
22 between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362
23 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740,
24 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in
25 civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir.
26 1982).

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

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

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

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

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

14 3. Plaintiff's complaint is dismissed.

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

17 a. The completed Notice of Amendment; and

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

19 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
20 Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must
21 bear the docket number assigned this case and must be labeled "Amended Complaint"; failure to

22 /////

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1 file an amended complaint in accordance with this order may result in the dismissal of this
2 action.

3 DATED: July 28, 2011.

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6 UNITED STATES MAGISTRATE JUDGE

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

JOVAN STRONG,

Plaintiff,

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

vs.

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 _____:

_____ Amended Complaint

DATED:

Plaintiff