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

CASANOVA CLAYBROOKS,

Plaintiff,

No. 2:11-cv-3002 GEB JFM (PC)

vs.

RACHEL DONAHOU, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On December 23, 2011, this court issued findings and recommendations recommending that this action be stayed pending completion of criminal proceedings then pending against plaintiff. On January 25, 2012, plaintiff filed a letter in which he states that the Shasta County District Attorney’s Office dropped all charges against him at a trial readiness hearing on December 2, 2011. Good cause appearing, the findings and recommendations will be vacated.

As noted in the December 23, 2011 findings and recommendations, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or

1 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a  
2 complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or  
3 malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary  
4 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

5 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
6 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
7 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
8 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
9 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
10 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
11 Cir. 1989); Franklin, 745 F.2d at 1227.

12 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and  
13 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
14 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
15 Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355  
16 U.S. 41, 47 (1957)). In order to survive dismissal for failure to state a claim a complaint must  
17 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain  
18 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,  
19 id. However, “[s]pecific facts are not necessary; the statement [of facts] need only “‘give the  
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’”” Erickson  
21 v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007) (quoting Bell, 127 S.Ct. at 1964, in turn  
22 quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this  
23 standard, the court must accept as true the allegations of the complaint in question, Erickson, id.,  
24 and construe the pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416  
25 U.S. 232, 236 (1974).

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1           In his complaint, filed November 10, 2011, plaintiff claims that he is “falsely  
2 imprisoned prosecuted and discriminated against by the district attorney office along with Rachel  
3 Donahou.” Complaint, filed November 10, 2011, at 5. Plaintiff alleges that for five months he  
4 has been held in the Shasta County Jail for a crime he did not commit, and he alleges generally  
5 that he is being discriminated against based on a prior sex offense and his race. Id. He also  
6 alleges that he is “at the mercy” of the public defender’s office because he has no access to a law  
7 library. Id. Exhibits appended to the complaint, which pursuant to Fed. R. Civ. P. 10(c) are a  
8 part thereof for all purposes, show that plaintiff was arrested for assault with a deadly weapon  
9 and a parole violation following an altercation with his mother and that Rachel Donahou is an  
10 assistant district attorney in Shasta County. See Exs. B and C to Complaint. Plaintiff seeks  
11 compensatory and punitive damages.

12           Plaintiff’s January 25, 2012 letter suggests that the charges that are the subject of  
13 plaintiff’s complaint have been dropped. It is not clear whether plaintiff has any cognizable  
14 federal claim against any of the individuals involved in those criminal proceedings. Accordingly,  
15 plaintiff’s complaint will be dismissed and plaintiff will be granted thirty days to file an amended  
16 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 allege in specific terms  
20 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless  
21 there is some affirmative link or connection between a defendant’s actions and the claimed  
22 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
23 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
24 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of  
25 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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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. The findings and recommendations filed December 23, 2011 are vacated;
- 10 2. Plaintiff's complaint is dismissed.
- 11 3. Within thirty days from the date of this order, plaintiff shall complete the  
12 attached Notice of Amendment and submit the following documents to the court:

13 a. The completed Notice of Amendment; and

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

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

20 DATED: March 9, 2012.

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23 UNITED STATES MAGISTRATE JUDGE

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

CASANOVA CLAYBROOKS,

Plaintiff,

No. 2:11-cv-3002 GEB JFM (PC)

vs.

RACHEL DONAHOU, et al.,

NOTICE OF AMENDMENT

Defendants.

\_\_\_\_\_ /

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

\_\_\_\_\_ Amended Complaint

DATED:

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Plaintiff