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

SCOTT PAPENHOUSEN,

Plaintiff,

No. 2:12-cv-0018 KJM JFM (PC)

vs.

STEVE CLARK, et al.,

Defendants.

ORDER

_____/

Plaintiff is a county jail inmate proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has paid the appropriate filing fee. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff filed his original complaint on January 4, 2012. On January 17, 2012 plaintiff filed a document in which he states that he neglected to include the last page in that complaint. The complaint filed January 4, 2012 does, however, include a last page. The document filed by plaintiff on January 17, 2012 will therefore be disregarded.

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

1 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
2 U.S.C. § 1915A(b)(1),(2).

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

10 A complaint, or portion thereof, should only be dismissed for failure to state a
11 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
12 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
13 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer
14 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
15 complaint under this standard, the court must accept as true the allegations of the complaint in
16 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the
17 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,
18 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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 allege with at least some degree of particularity overt acts which defendants engaged in that
14 support plaintiff's claim. Id. Because plaintiff has failed to comply with the requirements of Fed.
15 R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file
16 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 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. Plaintiff's complaint is dismissed.

10 2. Plaintiff is granted thirty days from the date of service of this order to file an
11 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
12 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
13 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file
14 an original and two copies of the amended complaint; failure to file an amended complaint in
15 accordance with this order will result in a recommendation that this action be dismissed.

16 DATED: February 16, 2012.

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19 UNITED STATES MAGISTRATE JUDGE

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