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

RYAN BIGOSKI ODOM,

No. 2:12-cv-0390-LKK-CMK-P

Plaintiff,

vs.

ORDER

SOLANO COUNTY JUSTICE CENTER  
DETENTION FACILITY, et al.,

Defendants.

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Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s amended complaint (Doc. 13).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See *McHenry v. Renne*, 84 F.3d 1172,

1 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the  
2 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it  
3 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege  
4 with at least some degree of particularity overt acts by specific defendants which support the  
5 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
6 impossible for the court to conduct the screening required by law when the allegations are vague  
7 and conclusory.

### 8 **I. PLAINTIFF'S ALLEGATIONS**

9 In his amended complaint, plaintiff alleges that Dr. Firman prescribed orthotic  
10 inserts for his left shoe, which was necessary due to a deformed hip. However, Lt. Marsh and the  
11 Facility Medical Director, who were the two with the final decision making authority, refused to  
12 allow him the orthotic. Because of the refusal, he lived with severe pain during his time at the  
13 Solano County Jail, June 22, 2011, through November 13, 2013. Plaintiff names the Solano  
14 County Justice Center Detention Facility, Lt. Marsh, the Facility Medical Director as defendants  
15 to this action.

### 16 **II. DISCUSSION**

17 Plaintiff was previously informed what was required to state a claim under 42  
18 U.S.C. § 1983 for violation of his civil rights. Plaintiff originally named Dr. Firman as a  
19 defendant in this action. However, it is clear from plaintiff's amended complaint, that Dr.  
20 Firman is not the one responsible for refusing to provide plaintiff with his medical device.  
21 Rather, Dr. Firman actually prescribed the device which others then denied. Therefore, Dr.  
22 Firman will be dismissed from this action.

23 As written, plaintiff has alleged sufficient facts to state a claim against Lt. Marsh  
24 and the Facility Medical Director. The Director will need to be identified, as only the individual  
25 who participated in the decision making process at the time can be held responsible. If another  
26 individual is now holding that position, no liability will attach to that person. However, there are

1 other deficiencies in Plaintiff's amended complaint which must be cured before this case can go  
2 forward.

3           Plaintiff was informed that to state a claim under 42 U.S.C. § 1983, he must allege  
4 an actual connection or link between the actions of the named defendants and the alleged  
5 deprivations. See Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423  
6 U.S. 362 (1976). However, in his amended complaint, plaintiff fails to allege any facts relating  
7 to the Solano County Justice Center Detention Facility. Municipalities and other local  
8 government units are among those "persons" to whom § 1983 liability applies. See Monell v.  
9 Dep't of Soc. Servs., 436 U.S. 658, 690 (1978). Counties and municipal government officials are  
10 also "persons" for purposes of § 1983. See id. at 691; see also Thompson v. City of Los Angeles,  
11 885 F.2d 1439, 1443 (9th Cir. 1989). A local government unit, however, may not be held  
12 responsible for the acts of its employees or officials under a respondeat superior theory of  
13 liability. See Bd. of County Comm'rs v. Brown, 520 U.S. 397, 403 (1997). Thus, municipal  
14 liability must rest on the actions of the municipality, and not of the actions of its employees or  
15 officers. See id. To assert municipal liability, therefore, the plaintiff must allege that the  
16 constitutional deprivation complained of resulted from a policy or custom of the municipality.  
17 See id. A claim of municipal liability under § 1983 is sufficient to withstand dismissal even if it  
18 is based on nothing more than bare allegations that an individual defendant's conduct conformed  
19 to official policy, custom, or practice. See Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d  
20 621, 624 (9th Cir. 1988). If plaintiff contends the facility itself has violated his rights, he must  
21 allege facts specifically related to the facility, that meet the requirements set forth above.

22           In addition, plaintiff's amended complaint is not signed. Rule 11 of the Federal  
23 Rules of Civil Procedure require every pleading to be signed, either by the attorney of record or  
24 by the party personally if unrepresented. Thus, the amended complaint is insufficient as filed.  
25 Plaintiff must submit a signed second amended complaint if he wishes to proceed in this action.

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1 **III. CONCLUSION**

2 Because it is possible that the deficiencies identified in this order may be cured by  
3 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire  
4 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is  
5 informed that, as a general rule, an amended complaint supersedes the original complaint. See  
6 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to  
7 amend, all claims alleged in the original complaint which are not alleged in the amended  
8 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if  
9 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make  
10 plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be  
11 complete in itself without reference to any prior pleading. See id.

12 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
13 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
14 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
15 each named defendant is involved, and must set forth some affirmative link or connection  
16 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d  
17 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

18 Finally, plaintiff is warned that failure to file an amended complaint within the  
19 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at  
20 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply  
21 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).  
22 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

23 Accordingly, IT IS HEREBY ORDERED that:

24 1. Plaintiff's amended complaint is dismissed with leave to amend; and

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