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

9 DAVID G. LEONARD,

10 Plaintiff,

No. 2:12-cv-00915 GGH P

11 vs.

12 JIM DENNY, et al.,

13 Defendants.

ORDER

14 \_\_\_\_\_/  
15 Plaintiff is a state prisoner proceeding pro se. He seeks relief pursuant to 42  
16 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma  
17 pauperis. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C.  
18 § 636(b)(1).

19 The certificate portion of plaintiff's motion to proceed in forma pauperis, which  
20 must be completed by plaintiff's institution of incarceration, has not been filled out. Also, the  
21 court has not received a certified copy of plaintiff's prison trust account statement for the six  
22 month period immediately preceding the filing of the complaint. See 28 U.S.C. § 1915(a)(2).

23 The court notes that plaintiff has written a letter, dated April 9, 2012, which reads  
24 that he is submitting his completed certification along with the April 9, 2012 letter. See Doc. No.  
25 7. However, a review of the court's electronic filing system reflects that no certification is  
26 attached to the letter. Id. Accordingly, plaintiff will be provided the opportunity to submit a

1 completed certified copy of his prison trust account statement for the six month period  
2 immediately preceding the filing of the complaint in support of his application.

3           The court is required to screen complaints brought by prisoners seeking relief  
4 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
5 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised  
6 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be  
7 granted, or that seek monetary relief from a defendant who is immune from such relief. 28  
8 U.S.C. § 1915A(b)(1),(2).

9           A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
11 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
15 Cir. 1989); Franklin, 745 F.2d at 1227.

16           A complaint must contain more than a “formulaic recitation of the elements of a  
17 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the  
18 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).  
19 “The pleading must contain something more...than...a statement of facts that merely creates a  
20 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal  
21 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient  
22 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft  
23 v. Iqbal, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127  
24 S.Ct. 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows  
25 the court to draw the reasonable inference that the defendant is liable for the misconduct  
26 alleged.” Id.

1 In reviewing a complaint under this standard, the court must accept as true the  
2 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
3 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,  
4 and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.  
5 1843 (1969).

#### 6 Summary of Complaint

7 Plaintiff, who is currently a prisoner at Avenal State Prison, alleges that he  
8 received inadequate medical care in violation of the Eighth and Fourteenth Amendments while  
9 he was detained at Sutter County Jail from June, 2009 through April, 2010. He names as  
10 defendants a physician and nurse at the jail, as well as the county sheriff, the county sheriff's  
11 department, the county, and the county jail. See Doc. No. 1 at 2, § III. He seeks injunctive,  
12 declaratory, and monetary relief, including "third party damages." See id. at 43-46.

13 In addition to himself, plaintiff names as an additional plaintiff a minor child. See  
14 Doc. No. 1 at 7, ¶ 5. Plaintiff describes the minor as "represented by David Leonard as guardian  
15 of said minor, and is a party of interest which has or will suffer damages from injuries and the  
16 cause of action herein stated." See id. He also describes the minor as his step-child. See id. at  
17 42, ¶ 148.

18 Among the damages sought by plaintiff are third party damages, sought on behalf  
19 of losses suffered by plaintiff's family and his family businesses (see Doc. No. 1 at 45-46, ¶¶ 12-  
20 13). In addition, plaintiff seeks injunctive relief in the form of an order directing defendants,  
21 among other things, to provide adequate and timely medical care to all inmates without  
22 unnecessary delay. See id. at 43, ¶ 1.

#### 23 Analysis

24 Plaintiff cannot bring an action on behalf of a minor child without retaining a  
25 lawyer. See Johns v. County of San Diego, 114 F.3d 874, 877 (9th Cir. 1997) (issue of whether a  
26 parent can bring a pro se lawsuit on behalf of a minor falls squarely within the ambit of

1 principles that militate against allowing non-lawyers to represent others in court). In this case,  
2 plaintiff is pro se, and accordingly cannot maintain an action on behalf of the minor child.

3 In addition, plaintiff's request for injunctive relief against defendants, seeking  
4 prospective direction on the provision of medical care, is moot, because defendants are no longer  
5 responsible for plaintiff's medical care. See Dilley v. Gunn, 64 F.3d 1365, 1368 (9th Cir. 1995).  
6 Because plaintiff is no longer suffering from allegedly inadequate care from defendants, he lacks  
7 standing to seek injunctive relief on behalf of others. See City of Los Angeles v. Lyons, 461 U.S.  
8 95, 111, 103 S.Ct. 1660, 1670 (1983).

9 Accordingly, any claims made by plaintiff on behalf of the minor child must be  
10 dismissed without prejudice. See Johns v. County of San Diego, 114 F.3d at 878. Any claims  
11 seeking prospective injunctive relief against defendants must be dismissed for lack of  
12 jurisdiction.

13 Plaintiff may file an amended complaint within 28 days of the filing date of this  
14 order. If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
15 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.  
16 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how  
17 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there  
18 is some affirmative link or connection between a defendant's actions and the claimed  
19 deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d  
20 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,  
21 vague and conclusory allegations of official participation in civil rights violations are not  
22 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

23 In addition, plaintiff is informed that the court cannot refer to a prior pleading in  
24 order to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended  
25 complaint be complete in itself without reference to any prior pleading. This is because, as a  
26 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375

1 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
2 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
3 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

4 If the plaintiff chooses not to amend his complaint, the remaining claims will  
5 proceed against the remaining defendants only.

6 Request for Appointment of Counsel

7 Plaintiff requests that the court appoint counsel. District courts lack authority to  
8 require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States  
9 Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an  
10 attorney to voluntarily to represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell v.  
11 Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36  
12 (9th Cir. 1990). When determining whether “exceptional circumstances” exist, the court must  
13 consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to  
14 articulate his claims pro se in light of the complexity of the legal issues involved. Palmer v.  
15 Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to  
16 appoint counsel). The burden of demonstrating exceptional circumstances is on the plaintiff. Id.  
17 Circumstances common to most prisoners, such as lack of legal education and limited law library  
18 access, do not establish exceptional circumstances that warrant a request for voluntary assistance  
19 of counsel.

20 In this case, the grounds identified by plaintiff in support of his application are  
21 just those types of factors common to most prisoners, such as his limited access to the law library  
22 or the complexity of the discovery required. Having considered the factors under Palmer, the  
23 court finds that plaintiff has failed to meet his burden of demonstrating exceptional  
24 circumstances warranting the appointment of counsel at this time.

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

2 1. Plaintiff shall submit, within thirty days from the date of this order, a  
3 completed affidavit in support of his request to proceed in forma pauperis on the form provided  
4 by the Clerk of Court;

5 2. The Clerk of the Court is directed to send plaintiff a new Application to  
6 Proceed In Forma Pauperis By a Prisoner;

7 3. Plaintiff shall submit, within thirty days from the date of this order, a certified  
8 copy of his prison trust account statement for the six month period immediately preceding the  
9 filing of the complaint. Plaintiff's failure to submit the completed affidavit and the certified copy  
10 of his prison trust account statement will result in a recommendation that this action be dismissed  
11 without prejudice;

12 4. The motion for appointment of counsel (Doc. No. 4) is denied; and

13 5. All claims raised by plaintiff on behalf of his co-plaintiff minor child are  
14 dismissed. Plaintiff's request for injunctive relief is also dismissed. Plaintiff may file an  
15 amended complaint within 28 days of the filing date of this order. Failure to file an amended  
16 complaint will result in the action proceeding only on the remaining claims.

17 DATED: July 10, 2012

18 /s/ Gregory G. Hollows  
19 UNITED STATES MAGISTRATE JUDGE

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