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

MARIO NGWAZI WOOTEN,

Plaintiff,

No. 2:12-cv-1236 EFB P

vs.

JODEH JENEKS, et al.,

Defendants.

ORDER

_____/

Plaintiff is a county inmate proceeding pro se with this civil rights action under 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) and is before the undersigned pursuant to plaintiff's consent. Dckt. No. 5; see E.D. Cal. Local Rules, Appx. A, at (k)(4). In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis.

I. Request to Proceed In Forma Pauperis

Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Dckt. No. 7. Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

1 **II. Screening Order**

2 Federal courts must engage in a preliminary screening of cases in which prisoners seek
3 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion
5 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
6 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
7 relief.” *Id.* § 1915A(b).

8 In order to avoid dismissal for failure to state a claim a complaint must contain more than
9 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
10 of action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007). In other words,
11 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
12 statements do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

13 Furthermore, a claim upon which the court can grant relief has facial plausibility.
14 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
15 content that allows the court to draw the reasonable inference that the defendant is liable for the
16 misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949. When considering whether a complaint states a
17 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
18 *Pardus*, 127 S. Ct. 2197, 2200 (2007), and construe the complaint in the light most favorable to
19 the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

20 A *pro se* plaintiff must satisfy the pleading requirements of Rule 8(a) of the Federal
21 Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and plain
22 statement of the claim showing that the pleader is entitled to relief, in order to give the defendant
23 fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*,
24 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

25 In order to state a claim under 42 U.S.C. § 1983, a plaintiff must allege: (1) the violation
26 of a federal constitutional or statutory right; and (2) that the violation was committed by a person

1 acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v.*
2 *Williams*, 297 F.3d 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil
3 rights claim unless the facts establish the defendant's personal involvement in the constitutional
4 deprivation or a causal connection between the defendant's wrongful conduct and the alleged
5 constitutional deprivation. *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v.*
6 *Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978).

7 The court has reviewed plaintiff's complaint pursuant to § 1915A and finds that the
8 allegations are too vague and conclusory to state a cognizable claim for relief. Although the
9 Federal Rules adopt a flexible pleading policy, a complaint must give fair notice and state the
10 elements of the claim plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646,
11 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts
12 which defendants engaged in that support plaintiff's claim. *Id.* Because plaintiff fails to state a
13 claim for relief, the complaint must be dismissed.

14 Plaintiff will be granted leave to file an amended complaint, if plaintiff can allege a
15 cognizable legal theory against a proper defendant and sufficient facts in support of that
16 cognizable legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
17 (district courts must afford pro se litigants an opportunity to amend to correct any deficiency in
18 their complaints). Should plaintiff choose to file an amended complaint, the amended complaint
19 shall clearly set forth the claims and allegations against each defendant. Any amended
20 complaint must cure the deficiencies identified above and also adhere to the following
21 requirements:

22 Any amended complaint must identify as a defendant only persons who personally
23 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
24 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
25 constitutional right if he does an act, participates in another's act or omits to perform an act he is
26 legally required to do that causes the alleged deprivation). It must also contain a caption

1 including the names of all defendants. Fed. R. Civ. P. 10(a).

2 Any amended complaint must be written or typed so that it so that it is complete in itself
3 without reference to any earlier filed complaint. L.R. 220. This is because an amended
4 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
5 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
6 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter
7 being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
8 1967)). Plaintiff may not change the nature of this suit by alleging new, unrelated claims in an
9 amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot”
10 complaints).

11 Accordingly, the court hereby orders that:

12 1. Plaintiff’s request to proceed *in forma pauperis* (Dckt. No. 7) is granted.

13 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
14 accordance with the notice to the Sheriff of Yolo County filed concurrently herewith.

15 3. The complaint is dismissed with leave to amend within 30 days. The amended
16 complaint must bear the docket number assigned to this case and be titled “First Amended
17 Complaint.” Failure to comply with this order will result in dismissal of this action for failure to
18 state a claim. If plaintiff files an amended complaint stating a cognizable claim the court will
19 proceed with service of process by the United States Marshal.

20 4. The Clerk of the Court is directed to terminate docket number 4.

21 Dated: August 14, 2012.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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