

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

KENNETH SMITH ARDELL,

Plaintiff,

No. 2:12-cv-2488 EFB P

vs.

SACRAMENTO SHERIFF'S
DEPARTMENT, et al.,

Defendants.

ORDER

_____/

Plaintiff proceeds pro se with this civil action. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Plaintiff has submitted the affidavit required by § 1915(a) showing that he is unable to prepay fees and costs or give security therefor. Accordingly, the request to proceed *in forma pauperis* will be granted. 28 U.S.C. § 1915(a). Determining plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

1 Although *pro se* pleadings are liberally construed, see *Haines v. Kerner*, 404 U.S. 519,
2 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if
3 it fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
4 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
5 (1957)); see also Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of
6 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
7 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to
8 relief above the speculative level on the assumption that all of the complaint’s allegations are
9 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
10 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
11 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

12 In reviewing a complaint under this standard, the court must accept as true the allegations
13 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740
14 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in
15 the plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A *pro se* plaintiff must
16 satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule
17 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the
18 pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the
19 grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007)
20 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

21 In order to state a claim under 42 U.S.C. § 1983, a plaintiff must allege: (1) the violation
22 of a federal constitutional or statutory right; and (2) that the violation was committed by a person
23 acting under the color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v.*
24 *Williams*, 297 F.3d 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil
25 rights claim unless the facts establish the defendant’s personal involvement in the constitutional
26 deprivation or a causal connection between the defendant’s wrongful conduct and the alleged

1 constitutional deprivation. *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v.*
2 *Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978).

3 Here, plaintiff fails to identify any individual officer who he claims violated his
4 constitutional rights. Instead, plaintiff claims that the “Sacramento Sheriff’s Department” and
5 unnamed officers violated his rights. “Municipalities and other local government units . . . [are]
6 among those persons to whom § 1983 applies.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658,
7 690 (1978). However, a municipal entity or its departments, is liable under § 1983 only if
8 plaintiff shows that his constitutional injury was caused by employees acting pursuant to the
9 municipality’s policy or custom. *See Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d 950, 964
10 (9th Cir. 2008) (citing 436 U.S. at 690-94).

11 Plaintiff’s allegations are too vague and conclusory to state a cognizable claim for relief.
12 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice
13 and state the elements of the claim plainly and succinctly. *Jones v. Community Redev. Agency*,
14 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of
15 particularity overt acts which defendants engaged in that support plaintiff’s claim. *Id.* Because
16 plaintiff fails to state a claim for relief, the complaint must be dismissed.

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

25 Any amended complaint must identify as a defendant only persons who personally
26 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*

1 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
2 constitutional right if he does an act, participates in another's act or omits to perform an act he is
3 legally required to do that causes the alleged deprivation). It must also contain a caption
4 including the names of all defendants. Fed. R. Civ. P. 10(a).

5 Any amended complaint must be written or typed so that it so that it is complete in itself
6 without reference to any earlier filed complaint. L.R. 220. This is because an amended
7 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
8 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
9 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
10 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
11 1967)).

12 Finally, the court cautions plaintiff that failure to comply with the Federal Rules of Civil
13 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.
14 *See* Local Rule 110.

15 Accordingly, IT IS ORDERED that:

- 16 1. Plaintiff's request for leave to proceed *in forma pauperis* is granted;
- 17 2. Plaintiff's complaint is dismissed with leave to amend; and,
- 18 3. Plaintiff is granted thirty days from the date of service of this order to file an amended
19 complaint. The amended complaint must bear the docket number assigned to this case and must
20 be labeled “Amended Complaint.” Failure to timely file an amended complaint in accordance
21 with this order will result in a recommendation that this action be dismissed.

22 Dated: October 17, 2012.

23 
24 EDMUND F. BRENNAN
25 UNITED STATES MAGISTRATE JUDGE
26