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

VITALY V. KONONOV,

No. 2:15-cv-1324-GEB-CMK

Plaintiff,

vs.

ORDER

SACRAMENTO COUNTY SHERIFF  
DEPARTMENT, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, proceeding<sup>1</sup> pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1) and motion to proceed in forma pauperis (Doc. 12).

Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security therefor. His motion<sup>2</sup> to proceed in forma pauperis will therefore be granted.

\_\_\_\_\_ <sup>1</sup> It appears that plaintiff brought this action while incarcerated, but is now no longer confined.

<sup>2</sup> As it appears that plaintiff is no longer incarcerated, the requirement under § 1915(a) for providing a trust account statement is no longer necessary.



1 Plaintiff has also filed several supplemental declarations attempting to add new  
2 and unrelated claims to this action.

## 3 II. DISCUSSION

4 Plaintiff's complaint suffers from a number of defects. First, to state a claim  
5 under 42 U.S.C. § 1983, the plaintiff must allege an actual connection or link between the actions  
6 of the named defendants and the alleged deprivations. See Monell v. Dep't of Social Servs., 436  
7 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the  
8 deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act,  
9 participates in another's affirmative acts, or omits to perform an act which he is legally required  
10 to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740,  
11 743 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official  
12 personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d  
13 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth specific facts as to each individual  
14 defendant's causal role in the alleged constitutional deprivation. See Leer v. Murphy, 844 F.2d  
15 628, 634 (9th Cir. 1988).

16 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
17 See Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221,  
18 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based  
19 on an indisputably meritless legal theory or where the factual contentions are clearly baseless.  
20 Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however  
21 inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639,  
22 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

23 In order to avoid dismissal for failure to state a claim a complaint must contain  
24 more than "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements  
25 of a cause of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other  
26 words, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory

1 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim  
2 upon which the court can grant relief has facial plausibility. See Twombly, 550 U.S. at 570. “A  
3 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
4 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.  
5 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
6 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),  
7 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes,  
8 416 U.S. 232, 236 (1974).

9           The court finds the allegations in plaintiff’s complaint so vague and conclusory  
10 that it fails to state a claim upon which relief can be granted. Although the Federal Rules of Civil  
11 Procedure adopt a flexible pleading policy, a complaint must give fair notice and state the  
12 elements of the claim plainly and succinctly. See Jones v. Community Redev. Agency, 733 F.2d  
13 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity overt  
14 acts which defendants engaged in that support plaintiff’s claim. See id. Plaintiff fails to make the  
15 connection between the acts alleged and who the actor was. Plaintiff’s complaint must be  
16 dismissed for failure to state a claim. However, plaintiff will be grant leave to file an amended  
17 complaint.

18           As to the specific claims plaintiff attempts to state in his complaint, the standards  
19 for those the court can decipher will be outlined for plaintiff’s benefit. As discussed below, if  
20 plaintiff chooses to file an amended complaint, he will be required to set forth with more  
21 particularity what his claims are.

#### 22           **A. Excessive Force**

23           The treatment a prisoner receives in prison and the conditions under which the  
24 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel  
25 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,  
26 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts

1 of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102  
2 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.  
3 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with  
4 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,  
5 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only  
6 when two requirements are met: (1) objectively, the official’s act or omission must be so serious  
7 such that it results in the denial of the minimal civilized measure of life’s necessities; and (2)  
8 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of  
9 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison  
10 official must have a “sufficiently culpable mind.” See id.

11           When prison officials stand accused of using excessive force, the core judicial  
12 inquiry is “. . . whether force was applied in a good-faith effort to maintain or restore discipline,  
13 or maliciously and sadistically to cause harm.” Hudson v. McMillian, 503 U.S. 1, 6-7 (1992);  
14 Whitley v. Albers, 475 U.S. 312, 320-21 (1986). The “malicious and sadistic” standard, as  
15 opposed to the “deliberate indifference” standard applicable to most Eighth Amendment claims,  
16 is applied to excessive force claims because prison officials generally do not have time to reflect  
17 on their actions in the face of risk of injury to inmates or prison employees. See Whitley, 475  
18 U.S. at 320-21. In determining whether force was excessive, the court considers the following  
19 factors: (1) the need for application of force; (2) the extent of injuries; (3) the relationship  
20 between the need for force and the amount of force used; (4) the nature of the threat reasonably  
21 perceived by prison officers; and (5) efforts made to temper the severity of a forceful response.  
22 See Hudson, 503 U.S. at 7. The absence of an emergency situation is probative of whether force  
23 was applied maliciously or sadistically. See Jordan v. Gardner, 986 F.2d 1521, 1528 (9th Cir.  
24 1993) (en banc). The lack of injuries is also probative. See Hudson, 503 U.S. at 7-9. Finally,  
25 because the use of force relates to the prison’s legitimate penological interest in maintaining  
26 security and order, the court must be deferential to the conduct of prison officials. See Whitley,

1 475 U.S. at 321-22.

2 Here, plaintiff alleges he was extracted from his cell three times, which resulted in  
3 injury, including fractured ribs. He does not, however, identify who was involved in the cell  
4 extraction or what was done that amounted to excessive use of force. Such conclusory  
5 allegations are simply insufficient to state a claim.

6 **B. Denial of Yard>Showers/Food**

7 Adequate food and sanitation are basic human needs protected by the Eighth  
8 Amendment. Keenan v. Hall, 83 F.3d 1083, 1091 (9th Cir. 1996), amended by 135 F.3d 1318  
9 (9th Cir. 1998) (citing Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982)). However, “only  
10 those deprivations denying ‘the minimal civilized measure of life’s necessities’ are sufficiently  
11 grave to form the basis of an Eighth Amendment violation.” Wilson v. Seiter, 501 U.S. 294, 298  
12 (1991) (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). “The Eighth Amendment  
13 requires only that prisoners receive food that is adequate to maintain health; it need not be tasty  
14 or aesthetically pleasing.” LeMaire v. Maass, 12 F.3d 1444, 1456 (9th Cir. 1993). Inmates are  
15 guaranteed sanitation and personal hygiene supplies. See Keenan, 83 F.3d at 1091 (citing  
16 Hoptowit, 682 F.2d at 1246). Exercise is also a necessity; outdoor exercise can be required when  
17 inmates are otherwise confined in small cells for almost 24 hours a day. See Spain v. Procnier,  
18 600 F.2d 189, 199 (9th Cir. 1979). However, temporary unconstitutional conditions of  
19 confinement do not always rise to the level of constitutional violations. See Anderson v. County  
20 of Kern, 45 F.3d 1310 (9th Cir. 1995).

21 Here, plaintiff fails to provide the court with sufficient information to evaluate  
22 these claims. To the extent plaintiff alleges he was denied the use of a shower, he fails to  
23 provide allege such facts as when, how often, and by whom was he denied showers. He fails to  
24 make similar allegations regarding use of the yard and exercise module. As to the deprivation of  
25 food, plaintiff alleges two deputies (who are not named as defendants, but perhaps should be)  
26 threw his midday meal in the toilet or floor for four days. Missing one meal a day for four days,

1 while unpleasant, does not appear to rise to the level of an Eighth Amendment violation.  
2 However, without more, these claims are too vague and conclusory for the court to determine  
3 whether plaintiff can state a claim for relief.

#### 4 **C. Municipal Liability**

5 Municipalities and other local government units are among those “persons” to  
6 whom § 1983 liability applies. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978).  
7 Counties and municipal government officials are also “persons” for purposes of § 1983. See id.  
8 at 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local  
9 government unit, however, may not be held responsible for the acts of its employees or officials  
10 under a respondeat superior theory of liability. See Bd. of County Comm’rs v. Brown, 520 U.S.  
11 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not  
12 of the actions of its employees or officers. See id. To assert municipal liability, therefore, the  
13 plaintiff must allege that the constitutional deprivation complained of resulted from a policy or  
14 custom of the municipality. See id. A claim of municipal liability under § 1983 is sufficient to  
15 withstand dismissal even if it is based on nothing more than bare allegations that an individual  
16 defendant’s conduct conformed to official policy, custom, or practice. See Karim-Panahi v. Los  
17 Angeles Police Dep’t, 839 F.2d 621, 624 (9th Cir. 1988).

18 Here, plaintiff names both the Sacramento County Sheriff Department and the  
19 Sacramento County Mail Jail as defendants. However, the only possible liability which can be  
20 asserted against these two agencies would have to be based on the policy or customs of the  
21 agencies, which is not alleged. Plaintiff fails to make any allegations related to these two  
22 agencies.

#### 23 **D. Supervisor Liability**

24 Supervisory personnel are generally not liable under § 1983 for the actions of their  
25 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no  
26 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional



1 complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following  
2 dismissal with leave to amend, all claims alleged in the original complaint which are not alleged  
3 in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).  
4 Therefore, if plaintiff amends the complaint, the court cannot refer to the prior pleading in order  
5 to make plaintiff's amended complaint complete. See Local Rule 220. An amended complaint  
6 must be complete in itself without reference to any prior pleading. See id.

7           The Federal Rules of Civil Procedure allow a party to assert “as many claims as it  
8 has against an opposing party,” but does not provide for unrelated claims against several different  
9 defendants to be raised on the same action. Fed. R. Civ. Proc. 18(a). “Thus multiple claims  
10 against a single party are fine, but Claim A against Defendant 1 should not be joined with  
11 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in  
12 different suits.” George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff’s claims regarding  
13 the use of force are separate and distinct from the claims relating to the denial of showers, food  
14 and/or exercise. To the extent plaintiff has attempted to add new claims to this case, or  
15 supplement the claims alleged in the complaint, filing supplements and/or declarations is not the  
16 proper means in which to do so. A complaint must be complete in itself and not refer to any  
17 additional filings. Any amended complaint shall be limited to the claims raised in plaintiff’s  
18 original complaint. Plaintiff must choose which of his claims to proceed within in this action,  
19 and shall not add additional unrelated claims or additional unrelated defendants.

20           If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
21 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See  
22 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
23 each named defendant is involved, and must set forth some affirmative link or connection  
24 between each defendant’s actions and the claimed deprivation. See May v. Enomoto, 633 F.2d  
25 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). There can be no  
26 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a

1 defendant's actions and the claimed deprivation. Vague and conclusory allegations of official  
2 participation in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d  
3 266, 268 (9th Cir. 1982).

4 Finally, plaintiff is warned that failure to file an amended complaint within the  
5 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at  
6 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply  
7 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).  
8 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's motion to proceed in forma pauperis (Doc. 12) is granted;
- 11 2. Plaintiff's complaint is dismissed with leave to amend; and
- 12 4. Plaintiff shall file an amended complaint within 30 days of the date of  
13 service of this order.

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16 DATED: May 12, 2017

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18 **CRAIG M. KELLISON**  
19 UNITED STATES MAGISTRATE JUDGE  
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