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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERESA SMITH,
Plaintiff,
v.
STOCKTON POLICE DEPARTMENT,
et al.,
Defendants.

No. 2:16-cv-0493 KJM CKD PS

ORDER

Plaintiff is proceeding in this action pro se and in forma pauperis. Plaintiff has filed a second amended complaint.

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

1 In order to avoid dismissal for failure to state a claim a complaint must contain more than
2 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
3 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
5 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim
6 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
7 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
8 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.
9 at 1949. When considering whether a complaint states a claim upon which relief can be granted,
10 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
11 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
12 U.S. 232, 236 (1974).

13 The court finds the allegations in plaintiff’s complaint so vague and conclusory that it is
14 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
15 court has determined that the complaint does not contain a short and plain statement as required
16 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a
17 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones
18 v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at
19 least some degree of particularity overt acts which defendants engaged in that support plaintiff’s
20 claim. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2),
21 the complaint must be dismissed. The court will, however, grant leave to file a second amended
22 complaint.

23 If plaintiff chooses to amend the complaint, plaintiff must set forth the jurisdictional
24 grounds upon which the court’s jurisdiction depends. Federal Rule of Civil Procedure 8(a).
25 Further, plaintiff must demonstrate how the conduct complained of has resulted in a deprivation
26 of plaintiff’s federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

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1 The second amended complaint cures none of the deficiencies found in the original and
2 first amended complaints. To guide plaintiff in filing a third amended complaint, the court again
3 advises plaintiff of the following.

4 The second amended complaint sets forth allegations regarding incidents involving
5 officers of the Stockton Police Department. Some of the incidents involve plaintiff's children.
6 Plaintiff was previously advised that she may not proceed on her childrens' claims in propria
7 persona.

8 The Civil Rights Act under which this action was filed provides as follows:

9 Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of
10 the United States . . . to the deprivation of any rights, privileges, or immunities secured by the
11 Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other
12 proper proceeding for redress. 42 U.S.C. § 1983. The statute requires that there be an actual
13 connection or link between the actions of the defendants and the deprivation alleged to have been
14 suffered by plaintiff. See Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v.
15 Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional
16 right, within the meaning of § 1983, if he does an affirmative act, participates in another's
17 affirmative acts or omits to perform an act which he is legally required to do that causes the
18 deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

19 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
20 their employees under a theory of respondeat superior and, therefore, when a named defendant
21 holds a supervisory position, the causal link between him and the claimed constitutional
22 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
23 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). Vague
24 and conclusory allegations concerning the involvement of official personnel in civil rights
25 violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

26 Plaintiff is advised that in any amended complaint, she must set forth separate causes of
27 action and should not plead in one complaint incidents that are unrelated. In addition, if plaintiff
28 intends to pursue claims against a municipality, plaintiff must set forth facts alleging that local

1 government officials have intentionally violated plaintiff's constitutional rights, the violation was
2 part of policy or custom and was not an isolated incident, and that there is a link between the
3 specific policy or custom to the plaintiff's injury. See Monell v. Department of Social Servs., 436
4 U.S. 658, 690-92 (1978).

5 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
6 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended
7 complaint be complete in itself without reference to any prior pleading. This is because, as a
8 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
9 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
10 longer serves any function in the case. Therefore, in an amended complaint, as in an
11 original complaint, each claim and the involvement of each defendant must be sufficiently
12 alleged.

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

- 14 1. Plaintiff's second amended complaint is dismissed; and
- 15 2. Plaintiff is granted thirty days from the date of service of this order to file a third
16 amended complaint that complies with the requirements of the Federal Rules of Civil Procedure,
17 and the Local Rules of Practice; the third amended complaint must bear the docket number
18 assigned this case and must be labeled "Third Amended Complaint"; plaintiff must file an
19 original and two copies of the third amended complaint; failure to file a third amended complaint
20 in accordance with this order will result in a recommendation that this action be dismissed.

21 Dated: July 22, 2016

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23 _____
24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE

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