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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARNELL BLACK, SR.,  
Plaintiff,  
v.  
SGT. T. ROWLAND,  
Defendant.

No. 2:17-cv-0006 KJM KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
2 § 1915(b)(2).

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

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an  
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
14 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
15 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
16 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at  
17 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
19 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
22 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a  
23 formulaic recitation of the elements of a cause of action;" it must contain factual allegations  
24 sufficient "to raise a right to relief above the speculative level." Id. at 555. However, "[s]pecific  
25 facts are not necessary; the statement [of facts] need only 'give the defendant fair notice of what  
26 the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89, 93  
27 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).  
28 In reviewing a complaint under this standard, the court must accept as true the allegations of the

1 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most  
2 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other  
3 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

4 Plaintiff alleges violation of his First and Eighth Amendment rights. Plaintiff claims that  
5 defendant took plaintiff behind closed doors, called him “nigger” many times, and then began  
6 pulling up and down on plaintiff’s arm, which was already injured (plaintiff was awaiting surgery  
7 on his right shoulder). Plaintiff alleges five other correctional officers were “just laughing.”  
8 Plaintiff claims it was a “racial conspiracy attack.” As injury, plaintiff states “they” were “part of  
9 the racial attack.” (ECF No. 1 at 3.) Plaintiff seeks money damages.

10 The court finds the allegations in plaintiff’s complaint so vague and conclusory that it is  
11 unable to determine whether the current action is frivolous or fails to state a claim for relief.  
12 Plaintiff provides copies of his administrative appeals that suggest a broader context for the  
13 alleged incident. But the court and defendants are not required to review attachments to a  
14 complaint to determine plaintiff’s factual allegations. Rather, plaintiff must set forth sufficient  
15 factual allegations in his pleading to put defendant on notice of plaintiff’s claims.

16 The standards governing an excessive force claim are as follows. The use of excessive  
17 force against an inmate violates an inmate’s Eighth Amendment right to be free from cruel  
18 unusual punishment. Graham v. Connor, 490 U.S. 386, 393-94 (1989). The use of force is  
19 constitutional if employed to keep or restore order in the prison; it is unconstitutional if wielded  
20 “maliciously or sadistically for the very purpose of causing harm.” Whitley v. Albers, 475 U.S.  
21 312, 320-21 (1986). “That is not to say that every malevolent touch by a prison guard gives rise  
22 to a federal cause of action. The Eighth Amendment’s prohibition of ‘cruel and unusual’  
23 punishments necessarily excludes from constitutional recognition de minimis uses of physical  
24 force, provided that the use of force is not of a sort ‘repugnant to the conscience of mankind.’”  
25 Hudson v. McMillan, 501 U.S. 1, 9-10 (1992). The Supreme Court has identified five factors to  
26 consider in determining whether an official’s use of force was sadistic and malicious for the  
27 purpose of causing harm: (1) extent of the injury; (2) need to use the force; (3) relationship  
28 between the need to use the force and the amount used; (4) the threat “reasonably perceived” by

1 the official; and (5) any efforts made to temper the severity of the force. Id. at 7.

2 Moreover, “[a] mere allegation of conspiracy without factual specificity is insufficient.”  
3 Karim-Panahi v. Los Angeles Police Dep’t, 839 F.2d 621, 626 (9th Cir. 1988); see also Woodrum  
4 v. Woodward County, 866 F.2d 1121, 1126 (9th Cir. 1989) (conclusory allegations of conspiracy  
5 did not support a § 1983 claim).

6 In addition, plaintiff must plead an actual injury in order to demonstrate standing to pursue  
7 a civil rights claim in federal court.

8 The court has determined that the complaint does not contain sufficient factual allegations  
9 for the court to determine whether plaintiff states a cognizable Eighth Amendment claim against  
10 defendant, and there are no factual allegations demonstrating a First Amendment violation.  
11 Plaintiff must allege with at least some degree of particularity overt acts which defendant engaged  
12 in that support plaintiff’s claim. Id. Because plaintiff has failed to comply with the requirements  
13 of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave  
14 to file an amended complaint.

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
16 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. Rizzo v.  
17 Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each  
18 named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is  
19 some affirmative link or connection between a defendant’s actions and the claimed deprivation.  
20 Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743  
21 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil  
22 rights violations are not sufficient. Ivey v. Bd. 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 order to  
24 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 requirement exists  
26 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.  
27 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original  
28 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an

1 original complaint, each claim and the involvement of each defendant must be sufficiently  
2 alleged.

3 However, plaintiff is not required to re-submit his exhibits. Plaintiff's exhibits remain on  
4 file with the court and may be referred to by any party.

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

6 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

7 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
8 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.

9 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
10 Director of the California Department of Corrections and Rehabilitation filed concurrently  
11 herewith.

12 3. Plaintiff's complaint is dismissed.

13 4. Within thirty days from the date of this order, plaintiff shall complete the attached  
14 Notice of Amendment and submit the following documents to the court:

15 a. The completed Notice of Amendment; and

16 b. An original and one copy of the Amended Complaint.

17 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the  
18 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must  
19 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

20 Failure to file an amended complaint in accordance with this order may result in the  
21 dismissal of this action.

22 Dated: June 13, 2017

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KENDALL J. NEWMAN  
25 UNITED STATES MAGISTRATE JUDGE

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NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order  
filed \_\_\_\_\_.

DATED: \_\_\_\_\_ Amended Complaint

\_\_\_\_\_  
Plaintiff