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

JESSE FRANCIS MILLER, SR.,

No. 2:17-CV-0759-KJM-CMK

Plaintiff,

vs.

ORDER

DEPARTMENT OF VETERANS
AFFAIRS,

Defendant.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is plaintiff's complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h)(3), this court

1 must dismiss an action if the court determines that it lacks subject matter jurisdiction. Because
2 plaintiff, who is not a prisoner, has been granted leave to proceed in forma pauperis, the court
3 will screen the complaint pursuant to § 1915(e)(2). Pursuant to Rule 12(h)(3), the court will also
4 consider as a threshold matter whether it has subject-matter jurisdiction.

5 In this case, plaintiff names as the only defendant the Department of Veterans
6 Affairs hospital in Sacramento, California. According to plaintiff, a doctor at defendant hospital
7 showed “absolute disregard” in performing surgery. It appears that an initial surgery was not
8 successful and resulted in a complication that necessitated a second surgery to seal off plaintiff’s
9 right kidney. Plaintiff states that, as a result, he suffers continuing pain and difficulty emptying
10 his bladder. Plaintiff does not name the doctor, explain how the hospital is responsible, or allege
11 any violations of his constitutional or federal statutory rights. As currently plead, plaintiff’s
12 complaint presents a negligence claim against an unnamed defendant.

13 Because it is possible that the deficiencies identified in this order may be cured by
14 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire
15 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
16 informed that, as a general rule, an amended complaint supersedes the original complaint. See
17 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
18 amend, all claims alleged in the original complaint which are not alleged in the amended
19 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
20 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make
21 plaintiff’s amended complaint complete. See Local Rule 220. An amended complaint must be
22 complete in itself without reference to any prior pleading. See id.

23 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
24 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See
25 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
26 each named defendant is involved, and must set forth some affirmative link or connection

1 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
2 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's complaint is dismissed with leave to amend; and
- 10 2. Plaintiff shall file a first amended complaint within 30 days of the date of
11 service of this order.

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13 DATED: July 30, 2018

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15 **CRAIG M. KELLISON**
16 UNITED STATES MAGISTRATE JUDGE
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