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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL FOUST,  
  
                                Plaintiff,  
  
                                v.  
  
HARDIN INSURANCE COMPANY, et  
al.,  
  
                                Defendants.

No. 2:17-cv-1227 JAM CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. Since plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request 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 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 for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by

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1 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account  
2 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

3 I. Screening

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

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
11 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
15 Cir. 1989); Franklin, 745 F.2d at 1227.

16 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
17 "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause  
18 of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
19 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
20 statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim  
21 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. "A  
22 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
23 the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S.  
24 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
25 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),  
26 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416  
27 U.S. 232, 236 (1974).

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1 The court has reviewed plaintiff's complaint and finds that it fails to state a claim upon  
2 which relief can be granted as there is no discernable violation of federal law alleged. It appears  
3 to the court that the plaintiff may have received a check from the Hardin Insurance Company  
4 relating to Clark v. California, 3:96-cv-1486 CRB, a federal case in the Northern District of  
5 California, and that the plaintiff wanted the check to go to his mother. If the situation is as the  
6 court believes, there is no violation of federal law.

7 For these reasons, plaintiff's complaint will be dismissed. The court will provide plaintiff  
8 one opportunity to amend in order to state a claim upon which relief can be granted. If plaintiff  
9 chooses to file an amended complaint, plaintiff must demonstrate how the conditions complained  
10 of have resulted in a deprivation of plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227  
11 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in specific terms how each  
12 named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is  
13 some affirmative link or connection between a defendant's actions and the claimed deprivation.  
14 Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official  
15 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,  
16 268 (9th Cir. 1982).

17 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to  
18 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended  
19 complaint be complete in itself without reference to any prior pleading. This is because, as a  
20 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
21 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
22 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
23 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

## 24 II. Plain Language Summary for Pro Se Litigant

25 Since you are acting as your own attorney in this case, the court wants to make sure that  
26 you understand this order. The following information is meant to explain this order in plain  
27 English and is not intended as legal advice.

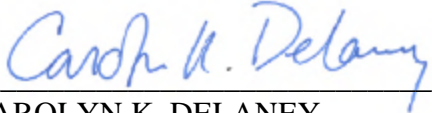
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1 The court has screened your complaint and has found that it does not state a claim upon  
2 which you can proceed. The court believes that your complaint alleges that a check was sent to  
3 you instead of to your mother. If this is, in fact, what happened and what you are suing about, this  
4 is not a federal constitutional violation. Because the court is not entirely sure that it understands  
5 your complaint, the court is allowing you another opportunity to explain what happened, in plain  
6 English, and explain why you think what happened violated federal law. You will have thirty  
7 days from the date you receive this order to file an amended complaint, which must be labeled  
8 “Amended Complaint,” and include the case number 2:17-cv-1227 JAM CKD.

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

- 10 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 6) is granted.
- 11 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees  
12 shall be collected and paid in accordance with this court’s order to the Director of the California  
13 Department of Corrections and Rehabilitation filed concurrently herewith.
- 14 3. Plaintiff’s complaint is dismissed.
- 15 4. Plaintiff is granted thirty days from the date of service of this order to file an amended  
16 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
17 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket  
18 number assigned this case and must be labeled “Amended Complaint.” Failure to file an  
19 amended complaint in accordance with this order will result in a recommendation that this action  
20 be dismissed.

21 Dated: July 18, 2017

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23 \_\_\_\_\_  
24 CAROLYN K. DELANEY  
25 UNITED STATES MAGISTRATE JUDGE

26 1/mp  
27 fous1227.14