

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE ARBOR CAMPOS RODRIGUEZ,  
Plaintiff,  
v.  
JOHN D'AGOSTINI, et al.,  
Defendants.

No. 2: 18-cv-0172 KJN P

ORDER

Plaintiff is a 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 is 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 Named as defendants are El Dorado County Sheriff John D’Agostini, El Dorado County  
5 Sheriff’s Department, Medical Director Dr. Kuhn and Correctional Medical Group Company  
6 (“CMGC”). Plaintiff alleges that while housed at the El Dorado County Jail, he was denied  
7 adequate clothing and bedding. In particular, plaintiff alleges that he asked for thermals, extra  
8 blankets and a pillow. In support of his request, plaintiff alleges that he told the nurse, “I’m one  
9 of those guys that has medical issues in my body and mind after getting in shot in the Vietnam  
10 War, with a few bullet fragments that never came out of my body completely.” Plaintiff alleges  
11 that his request for thermals, extra blankets and a pillow were denied. Plaintiff was told by  
12 Officer Olson that there was no medical need for thermals. Plaintiff alleges that defendant Kuhn  
13 just stated, “no extra clothing or pillow.”

14 Plaintiff appears to claim that he had a medical need for the thermals, extra blankets and  
15 extra pillow. It appears that plaintiff was a pretrial detainee at all relevant times. If this is not the  
16 case, plaintiff shall clarify his status in the jail in an amended complaint.

17 The standard applicable to a pretrial detainee’s claim for inadequate medical care under  
18 the Fourteenth Amendment is presently not clear. In the past, such claims were subject to the  
19 same state of mind requirement as an Eighth Amendment violation, i.e., subjective and deliberate  
20 indifference to a substantial risk of serious harm. See Clouthier v. Cty. of Contra Costa, 591 F.3d  
21 1232 (9th Cir. 2010). However, that holding was called into question by the United States  
22 Supreme Court in a Fourteenth Amendment excessive force case, Kingsley v. Hendrickson, 135  
23 S. Ct. 2466, 2473 (2015). Most recently, the Ninth Circuit extended the Kingsley rationale to a  
24 Fourteenth Amendment failure-to-protect claim. Castro v. Cty. of Los Angeles, 833 F.3d 1060,  
25 1070–71 (9th Cir. 2016) (en banc). In Guerra v. Sweeny, 2016 WL 5404407 (E.D. Cal. 2016)  
26 (Ishii, J.), the court extended Castro to an untreated medical needs case. The court determined  
27 that the elements of such a claim are: (1) The plaintiff made a request for medical care or the  
28 need for care was glaringly obvious; (2) The plaintiff had a serious medical need; (3) The

1 defendant did not take reasonable steps to obtain or provide medical care, even though a  
2 reasonable officer (or reasonable medical staff) in the circumstances would have appreciated the  
3 high degree of risk involved—making the likelihood of harm obvious; and (4) By not taking such  
4 measures, the defendant caused the plaintiff's injuries. Id. at \*3.

5 Plaintiff alleges that he required an extra pillow, extra blanket and thermals because of  
6 physical, and possible mental, injuries he suffered during the Vietnam War. Plaintiff alleges that  
7 he required the extra bedding and clothing because of bullets left in his body. These allegations  
8 are too vague for the undersigned to find that plaintiff had a serious medical need. For this  
9 reason, plaintiff's claim alleging inadequate medical care is dismissed. If plaintiff files an  
10 amended complaint, he shall describe in more detail his medical and mental problems on which  
11 he based his request for extra bedding and clothing. For example, plaintiff shall address how the  
12 bullets in his body caused him to need extra bedding and/or extra clothing. Plaintiff shall also  
13 address any injuries to his neck which warrant his request for an extra pillow. Plaintiff shall also  
14 address how he brought his medical needs to the attention of defendants.

15 Plaintiff may also be raising a separate claim regarding the temperature of the jail,  
16 unrelated to his medical needs. In other words, plaintiff may be claiming that the jail was too  
17 cold. If plaintiff files an amended complaint, he shall clarify whether he is raising a separate  
18 claim challenging the temperature of the jail. If plaintiff raises this claim, he shall describe the  
19 temperature of the jail and how it made him feel.

20 Plaintiff also alleges that he requires eye glasses because he cannot see things that are 20  
21 inches or less away. Plaintiff alleges that defendant Kuhn denied his request to see an outside eye  
22 specialist. As a result, plaintiff alleges that he is suffering with his eye problem.

23 Based on plaintiff's description of his vision problem, it appears that plaintiff is claiming  
24 that he requires reading glasses. The need for reading glasses does not present a serious medical  
25 need. See Canell v. Multnomah County, 141 F.Supp.2d 1046, 1057 (D. Or. 2011) (need for  
26 reading glasses did not present a serious medical need). For this reason, plaintiff's claim alleging  
27 that he was denied glasses is dismissed with leave to amend.

28 ////

1           Because plaintiff has not pled potentially colorable claims regarding the alleged  
2 deprivations, the undersigned finds that he has not stated potentially colorable claims against  
3 defendants Sheriff, D'Agostini, El Dorado County Sheriff's Department and CMGC. However,  
4 if plaintiff files an amended complaint naming these defendants, plaintiff is informed that a  
5 municipal entity or its departments is liable under section 1983 only if plaintiff shows that his  
6 constitutional injury was caused by employees acting pursuant to the municipality's policy or  
7 custom. Monell v. New York City Dep't of Soc. Servs., 436 U.S. 658, 691 (1978). Local  
8 government entities may not be held vicariously liable under section 1983 for the unconstitutional  
9 acts of its employees under a theory of respondeat superior. See Board v. Cty. Comm'rs. v.  
10 Brown, 520 U.S. 397, 403 (1997)

11           If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
12 about which he complains resulted in a deprivation of plaintiff's constitutional rights. Rizzo v.  
13 Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms how each  
14 named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983 unless there is  
15 some affirmative link or connection between a defendant's actions and the claimed deprivation.  
16 Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743  
17 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil  
18 rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

1. Plaintiff's request for leave to proceed in forma pauperis is granted.
2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the El Dorado County Sheriff filed concurrently herewith.
3. Plaintiff's complaint is dismissed.
4. Within thirty days from the date of this order, plaintiff shall complete the attached


Notice of Amendment and submit the following documents to the court:

- a. The completed Notice of Amendment; and
- b. An original and one copy of the Amended Complaint.

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

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

Dated: March 12, 2018

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

Rod172.14

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN ARBOR CAMPOS-RODRIGUEZ,  
Plaintiff,  
v.  
JOHN D'AGOSTINI, et al.,  
Defendants.

No. 2: 18-cv-172 KJN P

NOTICE OF AMENDMENT

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

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

\_\_\_\_\_  
Plaintiff