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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALPHONSO RAMON CLARK,  
Plaintiff,  
v.  
COUNTY OF SACRAMENTO,  
Defendant.

No. 2:20-cv-0432 AC P

ORDER

Plaintiff, a former county prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and the Americans with Disabilities Act (ADA) and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 2. 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 for monthly payments of twenty percent of the preceding month’s income credited to plaintiff’s prison trust account.

1 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
2 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
3 § 1915(b)(2).

## 4 II. Statutory Screening of Prisoner Complaints

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

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14 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as  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

18 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the  
19 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of  
20 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550  
21 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
22 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context  
23 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,  
24 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure  
25 to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a  
26 cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the  
27 speculative level." Twombly, 550 U.S. at 555 (citations omitted). "[T]he pleading must contain  
28 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally

1 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur  
2 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

3 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
4 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting  
5 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
6 content that allows the court to draw the reasonable inference that the defendant is liable for the  
7 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this  
8 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.  
9 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the  
10 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,  
11 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

### 12 III. Complaint

13 The complaint alleges that defendant Sacramento County violated plaintiff’s rights under  
14 the Eighth and Fourteenth Amendments and the ADA. ECF No. 1. Plaintiff alleges that he was  
15 forced to live and eat meals in his own feces and live without running water. Id. at 3. He also  
16 had to take his medication with water from the toilet and was not allowed showers. Id.

### 17 IV. Failure to State a Claim

#### 18 A. Eighth and Fourteenth Amendment Claims

19 While “municipalities and other local government units . . . [are] among those persons to  
20 whom § 1983 applies,” Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978), “a municipality  
21 can be liable under § 1983 only where its policies are the ‘moving force [behind] the  
22 constitutional violation,’” City of Canton v. Harris, 489 U.S. 378, 389 (1989) (alteration in  
23 original) (quoting Monell, 436 U.S. at 694 and Polk County. v. Dodson, 454 U.S. 312, 326  
24 (1981)). There must be “a direct causal link between a municipal policy or custom and the  
25 alleged constitutional deprivation.” Id. at 385.

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1           Although the conditions that plaintiff describes are sufficient to establish a violation of  
2 plaintiff's rights under either the Eighth or Fourteenth Amendment,<sup>1</sup> he does not allege facts  
3 showing that those conditions were the result of a policy or custom of the county. If the  
4 conditions plaintiff complains of were caused by the actions of specific individuals rather than a  
5 custom or policy of the County, those individuals must be named as defendants and plaintiff must  
6 allege facts showing what each individual did or did not do that he believes violated his rights.

7           B. Americans with Disabilities Act

8           Although plaintiff indicates that he is attempting to bring a claim under the ADA, there  
9 are no facts showing that he is an individual with a disability who was denied access to services,  
10 programs, or activities that he was otherwise qualified to participate in because of his disability.  
11 See McGary v. City of Portland, 386 F.3d 1259, 1265 (9th Cir. 2004) (quoting Thompson v.  
12 Davis, 295 F.3d 890, 895 (9th Cir. 2002)) (setting out elements of claim under Title II of the  
13 ADA). Accordingly, he has failed to state a claim for relief under the ADA.

14           V. Leave to Amend

15           Because the complaint fails to state a claim for relief, it will not be served. However,  
16 plaintiff will have the opportunity to amend.

17           If plaintiff chooses to file a first amended complaint, he must demonstrate how the  
18 conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo  
19 v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how  
20 each named defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th  
21 Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link  
22 or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy,  
23 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official

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25 <sup>1</sup> Plaintiff was in the custody of the Sacramento County Jail at the time of the alleged violations.  
26 However, he does not specify whether he was a pretrial detainee or a convicted inmate. See  
27 Vazquez v. County of Kern, 949 F.3d 1153, 1163-64 (9th Cir. 2020) ("[T]he Fourteenth  
28 Amendment is more protective than the Eighth Amendment 'because the Fourteenth Amendment  
prohibits *all* punishment of *pretrial detainees*, while the Eighth Amendment only prevents the  
imposition of *cruel and unusual* punishment of *convicted prisoners*.'" (quoting Demery v.  
Arpaio, 378 F.3d 1020, 1029 (9th Cir. 2004))).

1 participation in civil rights violations are not sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266,  
2 268 (9th Cir. 1982) (citations omitted).

3 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make  
4 his first amended complaint complete. Local Rule 220 requires that an amended complaint be  
5 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
6 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
7 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th  
8 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled  
9 in subsequent amended complaint to preserve appeal). Once plaintiff files a first amended  
10 complaint, the original complaint no longer serves any function in the case. Therefore, in an  
11 amended complaint, as in an original complaint, each claim and the involvement of each  
12 defendant must be sufficiently alleged.

13 VI. Plain Language Summary of this Order for a Pro Se Litigant

14 Your request to proceed in forma pauperis is granted and you are not required to pay the  
15 entire filing fee immediately.

16 You are being given leave to amend because the facts you have alleged in the complaint  
17 are not enough to state a claim for relief. You have not alleged facts showing that the conditions  
18 at the Sacramento County Jail were a result of a county policy or custom. The County itself can  
19 only be liable if its policy or custom caused the conditions you complain of. You must specify  
20 the policy or custom that caused the unconstitutional conditions. If the problems were caused by  
21 the actions of specific individuals, you must name them as defendants and explain what they did  
22 or did not do that you believe violated your rights.

23 If you choose to amend your complaint, the first amended complaint must include all of  
24 the claims you want to make because the court will not look at the claims or information in the  
25 original complaint. **Any claims and information not in the first amended complaint will not  
26 be considered.**

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

28 1. Plaintiff’s request for leave to proceed in forma pauperis, ECF No. 2, is GRANTED.

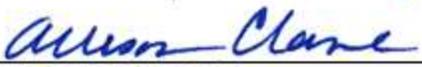
1           2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
2 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
3 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
4 appropriate agency filed concurrently herewith.

5           3. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28  
6 U.S.C. § 1915A, and will not be served.

7           4. Within thirty days from the date of service of this order, plaintiff may file an amended  
8 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
9 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket  
10 number assigned this case and must be labeled "First Amended Complaint." Plaintiff must file an  
11 original and two copies of the amended complaint. Failure to file an amended complaint in  
12 accordance with this order will result in a recommendation that this action be dismissed.

13           5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint  
14 form used in this district.

15 DATED: April 28, 2021

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17 ALLISON CLAIRE  
18 UNITED STATES MAGISTRATE JUDGE  
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