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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

5 WAYNE A. MURPHY,

6 Plaintiff,

7 v.

No. C11-5448 BHS/KLS

8 PIERCE COUNTY JAIL, PIERCE COUNTY
9 JAIL MEDICAL CARE CENTER, CARLOS
10 ORTIZ-VENEGAS, WILMER MELENDEZ,
11 MARY SCOTT, JULIETTE POHL-Y-
BACA, CRAIG ADAMS, VINCE
GOLDSMITH, and SAL MUNGIA,

ORDER TO AMEND OR SHOW CAUSE

12 Defendants.

13 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28
14 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Plaintiff’s application to proceed *in forma*
15 *pauperis* has been granted under separate Order. ECF No. 6. Presently before the Court for
16 review is Plaintiff’s proposed civil rights complaint. ECF No. 7. After reviewing Plaintiff’s
17 proposed complaint, the Court declines to serve the complaint because it is deficient.

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19 **DISCUSSION**

20 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
21 complaints brought by prisoners seeking relief against a governmental entity or officer or
22 employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint
23 or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that
24 fail to state a claim upon which relief may be granted, or that seek monetary relief from a
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1 defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See
2 *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

3 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*
4 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.
5 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
7 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
8 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
9 to relief above the speculative level, on the assumption that all the allegations in the complaint
10 are true.” See *Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).
11 In other words, failure to present enough facts to state a claim for relief that is plausible on the
12 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

13 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory
14 allegations of the law, unsupported conclusions, and unwarranted inferences need not be
15 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the court supply
16 essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of*
17 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). Unless it is absolutely clear that
18 amendment would be futile, however, a pro se litigant must be given the opportunity to amend
19 his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

20 Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, “the complaint [must
21 provide] ‘the defendant fair notice of what the plaintiff’s claim is and the ground upon which it
22 rests.’” *Kimes v. Stone* 84 F.3d 1121, 1129 (9th Cir. 1996) (citations omitted). In addition, in
23 order to obtain relief against a defendant under 42 U.S.C. § 1983, a plaintiff must prove that the
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1 particular defendant has caused or personally participated in causing the deprivation of a
2 particular protected constitutional right. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).
3 To be liable for “causing” the deprivation of a constitutional right, the particular defendant must
4 commit an affirmative act, or omit to perform an act, that he or she is legally required to do, and
5 which causes the plaintiff’s deprivation. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).
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7 Plaintiff claims that on July 3, 2008, he was assaulted by another inmate at the Pierce
8 County Jail. He was taken the emergency room at St. Joseph Hospital, where he was surgically
9 treated for a broken jaw, including internal fixation of plates and screws. After he returned to the
10 jail on July 7, 2008, the medical jail staff ignored the hospital treatment records and orders for
11 medications and instead, started taking him off of his medications. Plaintiff claims that he was
12 then placed on suicide watch on September 26, 2008 where he was given his medications for one
13 more day before being taken off of them. ECF No. 7, p. 3.
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15 Plaintiff sues the Pierce County Jail, the Pierce County Jail Medical Center, and several
16 individuals. However, he does not allege that any policy or practice of the Pierce County Jail is
17 at issue. Nor does he allege what the individually named defendants did or did not do that
18 caused him constitutional harm.

19 Under 42 U.S.C. § 1983, claims can only be brought against people who personally
20 participated in causing the alleged deprivation of a right. *Arnold v. IBM*, 637 F.2d 1350, 1355
21 (9th Cir. 1981). Neither a State nor its officials acting in their official capacities are “persons”
22 under section 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Plaintiff
23 must set forth factual allegations and allege with specificity the names of the persons who caused
24 or personally participated in causing the alleged deprivation of his constitutional rights. A
25 defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of supervisory
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1 responsibility or position. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694
2 n.58 (1978). A theory of *respondeat superior* is not sufficient to state a § 1983 claim. *Padway v.*
3 *Palches*, 665 F.2d 965 (9th Cir. 1982).

4 Plaintiff must allege with specificity the names of the individual persons who caused or
5 personally participated in causing the alleged deprivation of his constitutional rights and what
6 they have done or failed to do that resulted in the deprivation of his constitutional rights.
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8 To establish liability against Pierce County under § 1983, a plaintiff must show that (1)
9 he was deprived of a constitutional right; (2) the county has a policy; (3) the policy amounts to
10 deliberate indifference to plaintiff's constitutional rights; and (4) the policy is the moving force
11 behind the constitutional violation. *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir.1992). The
12 unconstitutional acts of a government agent cannot, standing alone, lead to liability against a
13 county; further, there is no respondeat superior liability under § 1983. *Monell v. New York City*
14 *Dept. of Social Services*, 436 U.S. 658, 692 (1978). A county may only be liable where its
15 policies are the “moving force [behind] the constitutional violation.” *City of Canton v. Harris*,
16 489 U.S. 378, 389, (1989) (quoting *Monell* at 694); *Ortez v. Washington County*, 88 F.3d 804
17 (9th Cir.1996).
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19 Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff
20 may file an amended complaint curing, if possible, the above noted deficiencies, or show cause
21 explaining why this matter should not be dismissed no later than **August 12, 2011**. If Plaintiff
22 chooses to amend his complaint, he must demonstrate how the conditions complained of have
23 resulted in a deprivation of his constitutional rights. The complaint must allege in specific terms
24 how each named defendant is involved. If Plaintiff chooses to proceed against Pierce County,
25 he must allege facts showing that he was deprived of a constitutional right, that the county has a
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1 policy amounting to deliberate indifference to his constitutional rights and that the policy is the
2 moving force behind the constitutional violation or violations that he is claiming.

3 The amended complaint must set forth all of Plaintiff's factual claims, causes of action,
4 and claims for relief. Plaintiff shall set forth his factual allegations **in separately numbered**
5 **paragraphs** and shall allege with specificity the following:

6 (1) the names of the persons who caused or personally participated in causing the
7 alleged deprivation of his constitutional rights;

8 (2) the dates on which the conduct of each Defendant allegedly took place; and

9 (3) the specific conduct or action Plaintiff alleges is unconstitutional.

10 An amended complaint operates as a complete substitute for (rather than a mere
11 supplement to) the present complaint. In other words, an amended complaint supersedes the
12 original in its entirety, making the original as if it never existed. Therefore, reference to a prior
13 pleading or another document is unacceptable – once Plaintiff files an amended complaint, the
14 original pleading or pleadings will no longer serve any function in this case. *See Loux v. Rhay*,
15 375 F.2d 55, 57 (9th Cir. 1967) (as a general rule, an amended complaint supersedes the prior
16 complaint). Therefore, in an amended complaint, as in an original complaint, each claim and the
17 involvement of each defendant must be sufficiently alleged.

18 Plaintiff shall present his complaint on the form provided by the court. The amended
19 complaint must be **legibly rewritten or retyped in its entirety**, it should be an original and not a
20 copy, it may not incorporate any part of the original complaint by reference, and it must be
21 clearly labeled the “Amended Complaint” and must contain the same cause number as this case.
22 Plaintiff should complete all sections of the court's form. Plaintiff may attach continuation
23 pages as needed but may not attach a separate document that purports to be his amended
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1 complaint. **Plaintiff is advised that he should make a short and plain statement of claims**
2 **against the defendants. He may do so by listing his complaints in separately numbered**
3 **paragraphs. He should include facts explaining how each defendant was involved in the**
4 **denial of his rights.**

5 The Court will screen the amended complaint to determine whether it contains factual
6 allegations linking each defendant to the alleged violations of Plaintiff's rights. The Court will
7 not authorize service of the amended complaint on any Defendant who is not specifically linked
8 to the violation of Plaintiff's rights.

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10 If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned
11 that if the amended complaint is not timely filed or if he fails to adequately address the issues
12 raised herein on or before **August 12, 2011**, the Court will recommend dismissal of this action as
13 frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a "strike" under 28 U.S.C.
14 § 1915(g). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three
15 or more civil actions or appeals which are dismissed on grounds they are legally frivolous,
16 malicious, or fail to state a claim, will be precluded from bringing any other civil action or
17 appeal in forma pauperis "unless the prisoner is under imminent danger of serious physical
18 injury." 28 U.S.C. § 1915(g). **The Clerk is directed to send Plaintiff the appropriate forms**
19 **for filing a 42 U.S.C. 1983 civil rights complaint and for service. The Clerk is further**
20 **directed to send a copy of this Order and a copy of the General Order to Plaintiff.**

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23 **DATED** this 19th day of July, 2011.

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25 Karen L. Strombom
26 United States Magistrate Judge