

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

Kristin Lee Hardy v. Romero, et al.

Hardy v. Romero · No. 2:25-cv-2638 CSK P · Decided November 12, 2025

OPINION

Romero

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 KRISTIN LEE HARDY, No. 2:25-cv-2638 CSK P

12 Plaintiff, ORDER 13 v. 14 ROMERO, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner
proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. 18 § 1983 and requested leave to
proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This 19 proceeding was referred to this
court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). 20 Plaintiff submitted a declaration
that makes the showing required by 28 U.S.C. § 1915(a). 21 Accordingly, the request to proceed
in forma pauperis is granted. 22 Plaintiff is required to pay the statutory filing fee of \$350.00 for
this action. 28 U.S.C. 23 §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial
partial filing fee in 24 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate
order, the court will direct 25 the appropriate agency to collect the initial partial filing fee from
plaintiff's trust account and 26 forward it to the Clerk of the Court. Thereafter, plaintiff is
obligated to make monthly payments 27 of twenty percent of the preceding month's income
credited to plaintiff's trust account. These 28 payments will be forwarded by the appropriate
agency to the Clerk of the Court each time the 1 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 On October 1, 2025, plaintiff
provided a signed complaint. (ECF No. 4.) Therefore, the 4 unsigned complaint (ECF No. 1) is
stricken. As discussed below, plaintiff's signed complaint is 5 dismissed with leave to amend.

6 I. SCREENING STANDARDS

7 The court is required to screen complaints brought by prisoners seeking relief against a 8
governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The 9
court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally 10
"frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
11 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),
(2). 12 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. 13

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

18 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 19 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably 20 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at 21 1227.

22 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain 23 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the 24 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic 25 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). 26 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a 27 formulaic recitation of the elements of a cause of action;” it must contain factual allegations 28 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555. 1 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the 2 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v. 3 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal 4 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as 5 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the 6 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 7 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

8 II. THE CIVIL RIGHTS ACT

9 To state a claim under § 1983, a plaintiff must demonstrate: (1) the violation of a federal 10 constitutional or statutory right; and (2) that the violation was committed by a person acting under 11 the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Jones v. Williams, 297 F.3d 12 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the 13 facts establish the defendant’s personal involvement in the constitutional deprivation or a causal 14 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation. 15 See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989); Johnson v. Duffy, 588 F.2d 740, 743-44 16 (9th Cir. 1978). That is, plaintiff may not sue any official on the theory that the official is liable 17 for the unconstitutional conduct of his or her subordinates. Ashcroft v. Iqbal, 556 U.S. 662, 679 18 (2009). The requisite causal connection between a supervisor’s wrongful conduct and the 19 violation of the prisoner’s constitutional rights can be established in a number of ways, including 20 by demonstrating that a supervisor’s own culpable action or inaction in the training, supervision, 21 or control of his subordinates was a cause of plaintiff’s

injury. *Starr v. Baca*, 652 F.3d 1202, 22 1208 (9th Cir. 2011).

23 III. PLAINTIFF’S COMPLAINT

24 Plaintiff alleges that on May 26, 2024, after he reported suicidal ideation, defendants 25 Romero, Habrerra, and Iberra, correctional officers at “Folsom/Sacramento, California,” 26 subjected plaintiff to cruel and unusual punishment by placing plaintiff, handcuffed behind his 27 back and in leg restraints, in a holding cell for five hours without water or restroom breaks, 28 despite plaintiff’s complaints of shoulder pain and need to use the restroom. (ECF No. 4 at 8-10.)
1 As a result of the prolonged handcuffing, plaintiff sustained injury to his right shoulder, which 2 prevents him from doing push-ups without pain. Plaintiff seeks money damages. (Id. at 9.)

3 IV. DISCUSSION

4 The Eighth Amendment prohibits the imposition of cruel and unusual punishments and 5 “embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency.” 6 *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (internal quotation marks and citation omitted). A 7 prison official violates the Eighth Amendment only when two requirements are met: (1) the 8 objective requirement that the deprivation is “sufficiently serious,” and (2) the subjective 9 requirement that the prison official has a “sufficiently culpable state of mind.” *Farmer v. 10 Brennan*, 511 U.S. 825, 834 (1994) (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). 11 The objective requirement that the deprivation be “sufficiently serious” is met where the 12 prison official’s act or omission results in the denial of “the minimal civilized measure of life’s 13 necessities.” *Id.* (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). The subjective 14 requirement that the prison official has a “sufficiently culpable state of mind” is met where the 15 prison official acts with “deliberate indifference” to inmate health or safety. *Id.* (quoting *Wilson*, 16 501 U.S. at 302-03). A prison official acts with deliberate indifference when he or she “knows 17 of and disregards an excessive risk to inmate health or safety.” *Id.* at 837. “[T]he official must 18 both be aware of facts from which the inference could be drawn that a substantial risk of 19 serious harm 20 exists, and he must also draw the inference.” *Id.* 20 Plaintiff alleges that he notified all three defendants that plaintiff was suffering shoulder 21 pain and needed to use the restroom, but defendants “responded that they could not allow plaintiff 22 to use the restroom, and that [plaintiff] would have to wait to be seen by a clinician.” (ECF No. 4 23 at 8-9.) Plaintiff was placed in the holding cell to await being seen by a mental health clinician 24 due to his report of suicidal ideation. Plaintiff sets forth no facts demonstrating any defendant 25 was acting with a sufficiently culpable state of mind. It is unclear whether any of the defendants 26 applied the handcuffs, or whether the handcuffs were applied in a manner to cause pain in 27 plaintiff’s shoulder area. 28 To the extent that plaintiff contends the conditions of his housing in the holding cell for 1 five hours without water or restroom breaks violated his Eighth Amendment rights, plaintiff also 2 failed to set forth facts that defendants acted with a sufficiently culpable state of mind. “The 3 Constitution ‘does not mandate comfortable prisons.’” *Farmer*, 511 U.S. at 832 (quoting *Rhodes 4 v. Chapman*, 452 U.S. at 349). Plaintiff fails to allege facts to demonstrate that

the conditions in 5 the holding cell were so inhumane that they violated the Eighth Amendment. In this district, a 6 court has found that being restricted to a holding cell for eight and a half hours without bathroom 7 access was insufficient to state a claim. *Garcia v. Garcia*, 2018 WL 11257395, at *5 (E.D. Cal.

8 May 30, 2018) (“Plaintiff’s suggestion that he was in the holding cell for approximately 8 1/2 9 hours without restroom access or food is insufficient to state a claim.”); see also *Hopson v. Kings 10 Cnty. Jail*, 2025 WL 565242, at *6 (Feb. 20, 2025) (“Here, Plaintiff’s allegations that he was 11 denied the use of the toilet in his cell because it was overflowing on a single occasion for about 12 five hours are insufficient to state a claim upon which relief may granted.”). Further, plaintiff 13 alleges no facts suggesting any defendant was aware that the conditions in the holding cell were 14 so inhumane that they constituted a substantial risk of serious harm 15 Plaintiff cites a prison policy that requires that an inmate put in restraints must be 16 provided fluids and nourishment every two hours, and must be restrained to avoid discomfort. 17 (ECF No. 4 at 9.) “[S]tate departmental regulations do not establish a federal constitutional 18 violation.” *Cousins v. Lockyer*, 568 F.3d 1063, 1070 (9th Cir. 2009). Rather, plaintiff must set 19 forth facts demonstrating that each defendant violated plaintiff’s constitutional rights. 20 Finally, plaintiff failed to clearly identify in which prison this incident took place. 21 Plaintiff states the three defendants were “assigned to the prison at Folsom/Sacramento.” (ECF 22 No. 4 at 8.) But two prisons are located in the Folsom/Sacramento area: Folsom State Prison, 23 Represa, California, and California State Prison, Sacramento, also located in Represa, California. 24 In any amended complaint, plaintiff must clearly identify where the incident took place, as well as 25 the specific prison in which each defendant was working so that the Court may accomplish 26 service on the defendant.

27 V. LEAVE TO AMEND

28 The Court finds the allegations in plaintiff’s complaint so vague and conclusory that it is 1 unable to determine whether the current action is frivolous or fails to state a claim for relief. The 2 Court determines that the complaint does not contain a short and plain statement as required by 3 Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint 4 must give fair notice and state the elements of the claim plainly and succinctly. *Jones v. Cmty. 5 Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some 6 degree of particularity overt acts which defendants engaged in that support plaintiff’s claim. *Id.* 7 Because plaintiff failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint 8 must be dismissed. However, the Court grants plaintiff leave to file an amended complaint. 9 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions 10 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. See e.g., 11 *West*, 487 U.S. at 48. Also, the complaint must allege in specific terms how each named 12 defendant is involved. *Rizzo v. Goode*, 423 U.S. 362, 371 (1976). There can be no liability 13 under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant’s 14 actions and

the claimed deprivation. *Rizzo*, 423 U.S. at 371; *May v. Enomoto*, 633 F.2d 164, 167 15 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official participation in civil 16 rights violations are not sufficient. *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). 17 In addition, 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 requirement exists 20 because, as a general rule, an amended complaint supersedes the original complaint. See *Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint 22 supersedes the original, the latter being treated thereafter as non-existent.'" (internal citation 23 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any 24 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim 25 and the involvement of each defendant must be sufficiently alleged.

26 VI. CONCLUSION

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. 5) is granted.] 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 | Director of the California Department of Corrections and Rehabilitation filed concurrently 5 || herewith. 6 3. Plaintiff's complaint is dismissed. 7 4. Within thirty days from the date of this order, plaintiff shall complete the attached 8 | Notice of Amendment and submit the following documents to the court: 9 a. The completed Notice of Amendment; and 10 b. An original of the Amended Complaint. 11 | Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the 12 || Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must 13 || also bear the docket number assigned to this case and must be labeled "Amended Complaint." 14 | Failure to file an amended complaint in accordance with this order may result in the dismissal of 15 || this action. 16 5. The Clerk of the Court is directed to strike plaintiff's original, unsigned complaint. 17 | (ECF No. 1.) 18 19 | Dated: November 12, 2025 A aA Aan Spe |

CHI SOO KIM

71 UNITED STATES MAGISTRATE JUDGE

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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KRISTIN LEE HARDY, No. 2:25-cv-2638 CSK P

11 Plaintiff,

12 NOTICE OF AMENDMENT

v. 13 ROMERO, et al., 14 Defendants. 15 16 Plaintiff submits the following document in

compliance with the court's order 17 filed on _____ (date). 18 19 Amended Complaint
20 (Check this box if submitting an Amended Complaint) 21 DATED:
_____ 22 Plaintiff 23 24 25 26 27 28

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