

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

BYRON L. SCOTT,

Plaintiff,

No. CIV S-07-0769 FCD DAD F

VS.

HIGH DESERT STATE
PRISON, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule 72-302 and 28 U.S.C. § 636(b)(1).

Plaintiff has submitted an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, plaintiff will be granted leave to proceed in forma pauperis.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. See 28 U.S.C. §§ 1914(a) & 1915(b)(1). An initial partial filing fee of \$2.68 will be assessed by this order. See 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 prison trust account and forward it to

1 the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of
2 twenty percent of the preceding month's income credited to plaintiff's prison trust account.
3 These payments will be collected and forwarded by the appropriate agency to the Clerk of the
4 Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in
5 full. See 28 U.S.C. § 1915(b)(2).

6 The court is required to screen complaints brought by prisoners seeking relief
7 against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.
8 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
9 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
10 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
11 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
14 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
15 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
16 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
17 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
18 Cir. 1989); Franklin, 745 F.2d at 1227.

19 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
20 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
21 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
22 Corp. v. Twombly, ____ U.S. ___, ___, 127 S. Ct. 1955, 1964 (2007) (quoting Conley v. Gibson,
23 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for failure to state a claim a
24 complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it
25 must contain factual allegations sufficient "to raise a right to relief above the speculative level."
26 Bell Atlantic, 127 S. Ct. at 1965. In reviewing a complaint under this standard, the court must

1 accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital
2 Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the
3 plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421
4 (1969).

5 The Civil Rights Act under which this action was filed provides as follows:

6 Every person who, under color of [state law] . . . subjects, or causes
7 to be subjected, any citizen of the United States . . . to the
deprivation of any rights, privileges, or immunities secured by the
8 Constitution . . . shall be liable to the party injured in an action at
law, suit in equity, or other proper proceeding for redress.

9 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
10 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
11 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
12 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the
13 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
14 omits to perform an act which he is legally required to do that causes the deprivation of which
15 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

16 Moreover, supervisory personnel are generally not liable under § 1983 for the
17 actions of their employees under a theory of respondeat superior and, therefore, when a named
18 defendant holds a supervisorial position, the causal link between him and the claimed
19 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
20 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
21 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
22 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
23 Cir. 1982).

24 In the present case, plaintiff has identified the following as defendants in this
25 action: High Desert State Prison; Warden T. Felker; Association Warden of Operations; and
26 Appeal Coordinators.

1 Plaintiff alleges that he is a member of the religious group “House of Yahweh.”
2 Plaintiff further alleges that T. Felker and defendants have infringed on his religious rights in
3 violation of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). For
4 example, plaintiff contends that the Associate Warden of Operations has refused to approve
5 religious vendors that meet his specified religious needs. In addition, plaintiff contends that the
6 appeals coordinators at High Desert State Prison have been “passive aggressive” in processing
7 his legitimate complaints. Plaintiff also maintains that the prison chaplains have been ordered to
8 deprive him of his right to religious activities. Plaintiff seeks declaratory relief, injunctive relief,
9 and other relief as the court deems just, proper, and equitable.

10 The allegations in plaintiff’s complaint are so vague and conclusory that the court
11 is unable to determine whether the current action is frivolous or fails to state a claim for relief.
12 The complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2).
13 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to
14 the defendants and must allege facts that support the elements of the claim plainly and succinctly.
15 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege
16 with at least some degree of particularity overt acts which each of the defendants engaged in that
17 support his claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R.
18 Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an
19 amended complaint.

20 If plaintiff files an amended complaint, plaintiff is advised that all defendants
21 must be identified in the caption of his pleading, and all defendants must be named, with position
22 and place of employment, in the section of the form designated for that purpose. Merely listing
23 defendants’ job titles, such as “Associate Warden” and “Appeals Coordinator,” is not sufficient.
24 In addition, in the section of the complaint in which the plaintiff is required to set forth a brief
25 statement of the facts of the case, he must describe how each defendant has deprived him of his
26 constitutional rights. There can be no liability under 42 U.S.C. § 1983 unless there is some

1 affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo
2 v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v.
3 Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

4 In addition, plaintiff is advised that, under RLUIPA, the government is prohibited
5 from imposing "a substantial burden on the religious exercise of a person residing in or confined
6 to an institution . . . even if the burden results from a rule of general applicability." 42 U.S.C. §
7 2000cc-1(a). The plaintiff bears the initial burden of demonstrating that an institution's actions
8 have placed a substantial burden on plaintiff's free exercise of religion. Plaintiff alleges in
9 several places in his complaint that defendants have denied him access to religious services.
10 However, to state a cognizable claim under RLUIPA, plaintiff must specify which defendants
11 have denied him access to religious services and in what way. Plaintiff must link his RLUIPA
12 claim together with specific defendants and specific conduct. Vague and conclusory allegations
13 of official participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673
14 F.2d 266, 268 (9th Cir. 1982).

15 Plaintiff is informed that the court cannot refer to a prior pleading in order to
16 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended
17 complaint be complete in itself without reference to any prior pleading. This is because, as a
18 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
19 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
20 longer serves any function in the case. Therefore, in an amended complaint, as in an original
21 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

22 Plaintiff has also submitted several discovery requests and motions to the court.
23 First, plaintiff has submitted a motion to compel D.L. Runnels to produce documents related to
24 religious guidelines at the prison. He has also submitted a request that D.L. Runnels produce for
25 inspection and copying his central files and any reports prison officials have written about him.

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1 Finally, plaintiff has submitted a motion to compel D.L. Runnels to respond to a set of
2 interrogatories.

3 Plaintiff's discovery requests are premature. The court has not ordered service
4 upon any defendants named in this action nor has the court issued a discovery order.
5 Accordingly, plaintiff's discovery requests and motions will be denied at this time.

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

- 7 1. Plaintiff's May 16, 2007 application to proceed in forma pauperis is granted.
- 8 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

9 Plaintiff is assessed an initial partial filing fee of \$2.68. All fees shall be collected and paid in
10 accordance with this court's order to the Director of the California Department of Corrections
11 and Rehabilitation filed concurrently herewith.

12 3. Plaintiff's complaint is dismissed.

13 4. Plaintiff is granted thirty days from the date of service of this order to file an
14 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
15 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
16 docket number assigned to this case and must be labeled "Amended Complaint"; failure to file an
17 amended complaint in accordance with this order will result in a recommendation that this action
18 be dismissed without prejudice.

19 5. Plaintiff's May 9, 2007 motion to compel is denied.

20 6. Plaintiff's May 9, 2007 request for production of documents is denied.

21 7. Plaintiff's May 10, 2007 motion to compel is denied.

22 DATED: February 6, 2008.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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