

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

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

AARON JAMES PIERCE,

Plaintiff,

No. CIV S-08-1148 FCD DAD P

vs.

JEANNE S. WOODFORD, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. In accordance with this court’s January 8, 2009 order, plaintiff has filed a second amended complaint together with an application to proceed in forma pauperis.

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). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. See 28 U.S.C. § 1915(b)(1). Plaintiff will be obligated to make monthly payments of twenty percent of the preceding month’s income credited to plaintiff’s prison trust account. These payments shall

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

4 The court is required to screen complaints brought by prisoners seeking relief
5 against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.
6 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
7 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
8 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
9 U.S.C. § 1915A(b)(1) & (2).

10 A claim is legally frivolous when 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
12 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
16 Cir. 1989); Franklin, 745 F.2d at 1227.

17 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
18 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
19 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
20 Corp. v. Twombly, 550 U.S. 544, ___, 127 S. Ct. 1955, 1965 (2007) (quoting Conley v. Gibson,
21 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for failure to state a claim a
22 complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it
23 must contain factual allegations sufficient "to raise a right to relief above the speculative level."
24 Bell Atlantic, 127 S. Ct. at 1965. In reviewing a complaint under this standard, the court must
25 accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital
26 Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the

1 plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421
2 (1969).

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

4 Every person who, under color of [state law] . . . subjects, or causes
5 to be subjected, any citizen of the United States . . . to the
6 deprivation of any rights, privileges, or immunities secured by the
7 Constitution . . . shall be liable to the party injured in an action at
8 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 supervisory 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 The claims set out in plaintiff's first amended complaint concerned medical care
25 and treatment at the California State Prison facilities known as the Correctional Training Facility,
26 High Desert State Prison and Mule Creek State Prison. Plaintiff has also alleged that he suffered
three assaults, two at the hands of fellow inmates and one by prison staff, all while confined at
High Desert State Prison. In the court's previous order, the undersigned has advised plaintiff that

1 to proceed in this action he needed to file a second amended complaint that specified the events
2 he alleges took place at High Desert State Prison and those he claims occurred at Mule Creek
3 State Prison that resulted in his constitutional rights being violated. Plaintiff was also instructed
4 to identify which defendants were involved in each of the events alleged in his second amended
5 complaint .

6 In plaintiff's second amended complaint now before the court, he names as
7 defendants Warden Scott Kernan and Warden David Runnels. Therein, plaintiff alleges as
8 follows:

9 In October 2003, I the plaintiff an individual with (A) arthritis in
10 pelvis (B) [illegible] hernia (C) Types 'A' 'B', 'C' Hepatitis was
11 transferred to CCC/Susanville Prison illegally because (1) these
12 disabilities (2) for firecamp training, and warden rejected me from
13 that prison because of my medical issues, and then had me, level
14 one minimum 'B' inmate transferred to HDSP/Susanville which is
a extremely high custody level, and violent prison, and while there
unknown named officers and inmates assaulted me several times,
housed me in single ad-seg cell with no recreation or law library
time from 2003 to 2005 before receiving operation on hernia I got
in prison in 2001, and took 4 years to receive.

15 (Compl. at 8.) By way of relief, plaintiff requests \$1,500,000 in damages. He also requests an
16 order requiring Warden Kernan to provide medical treatment to inmates transferred to his prison
17 and an order prohibiting Warden Kernan from transferring inmates to High Desert State Prison.
18 Finally, plaintiff requests an order requiring defendant Runnels to provide inmates with medical
19 and safety needs with the care they need. (Id.)

20 The allegations in plaintiff's complaint are so vague and conclusory that the court
21 is unable to determine whether the current action is frivolous or fails to state a claim for relief.
22 The complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2).
23 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to
24 the defendants and must allege facts that support the elements of the claim plainly and succinctly.
25 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege
26 with at least some degree of particularity overt acts which defendants engaged in that support his

1 claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P.
2 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file a third
3 amended complaint.

4 If plaintiff files a third amended complaint, he is advised that he must allege in
5 specific terms how defendants Kernan and Runnels were involved in the denial of his
6 constitutional rights. Plaintiff's second amended complaint fails in virtually all respects to allege
7 any specific causal link between the actions of the named defendants and the claimed
8 constitutional violations. There can be no liability under 42 U.S.C. § 1983 unless there is some
9 affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo
10 v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v.
11 Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations of official
12 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
13 268 (9th Cir. 1982).

14 In addition, if plaintiff elects to proceed with this action by filing an third
15 amended complaint, he is advised of the following legal standards. First, inmates do not have a
16 constitutional right to be incarcerated at a particular correctional facility. See Meachum v. Fano,
17 427 U.S. 215, 224-25 (1976). As the Ninth Circuit has explained:

18 An inmate's liberty interests are sufficiently extinguished by his
19 conviction so that the state may change his place of confinement
20 even though the degree of confinement may be different and prison
21 life may be more disagreeable in one institution than in another.
22 Unless there is some guarantee that transfer will not be effected
23 except for misbehavior or some other specified reason, due process
24 protections cannot apply.

25 Rizzo v. Dawson, 778 F.2d 527, 530 (9th Cir. 1985). Thus, plaintiff's general allegations of
26 deprivations of rights caused by prison officials' decisions regarding his place of confinement or
27 housing assignments do not give rise to a federal constitutional claim. See Bd. of Regents v.
Roth, 408 U.S. 564, 569 (1972).

28 ////

1 Second, to the extent that plaintiff seeks to raise a claim under the Americans with
2 Disabilities Act (“ADA”), he is advised that under Title II of the ADA plaintiff must allege four
3 elements: “(1) he is an individual with a disability; (2) he was otherwise qualified to participate
4 in or receive the benefit of some public entity’s services, programs, or activities; (3) he was either
5 excluded from participation in or denied the benefits of the public entity's services ... or was
6 otherwise discriminated against by the public entity; and (4) such exclusion, denial ... or
7 discrimination was by reason of his disability.” McGary v. City of Portland, 386 F.3d 1259,
8 1265 (9th Cir. 2004).

9 Third, to the extent that plaintiff seeks to raise an inadequate medical care claim,
10 he is advised that in Estelle v. Gamble, 429 U.S. 97, 106 (1976), the Supreme Court held that
11 inadequate medical care did not constitute cruel and unusual punishment cognizable under
12 § 1983 unless the mistreatment rose to the level of “deliberate indifference to serious medical
13 needs.” In applying this standard, the Ninth Circuit has held that before it can be said that a
14 prisoner’s civil rights have been abridged, “the indifference to his medical needs must be
15 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this
16 cause of action.” Broughton v. Cutter Lab., 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle,
17 429 U.S. at 105-06).

18 Finally, to the extent that plaintiff seeks to raise a claim that the defendants have
19 failed to protect him, he is advised that the Supreme Court has held that a prison official violates
20 the Eighth Amendment “only if he knows that inmates face a substantial risk of serious harm and
21 disregards that risk by failing to take reasonable measures to abate it.” Farmer v. Brennan, 511
22 U.S. 825, 847 (1994). Under this standard, a prison official must have a “sufficiently culpable
23 state of mind,” one of deliberate indifference to the inmate’s health or safety. Id. at 834.

24 Plaintiff is reminded that the court cannot refer to prior pleadings in order to make
25 his third amended complaint complete. Local Rule 15-220 requires that an amended complaint
26 be complete in itself without reference to any prior pleading. This is because, as a general rule,

1 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57
2 (9th Cir. 1967). Once plaintiff files a third amended complaint, the prior pleading no longer
3 serves any function in the case. Therefore, in a third amended complaint, as in an original
4 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. Plaintiff's January 23, 2009 application to proceed in forma pauperis (Doc. No.
7 118) is granted;

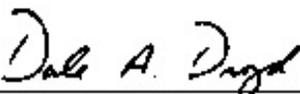
8 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
9 The fee shall be collected and paid in accordance with this court's order to the Director of the
10 California Department of Corrections and Rehabilitation filed concurrently herewith;

11 3. Plaintiff's January 23, 2009 second amended complaint is dismissed;

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

18 5. The Clerk of the Court is directed to send plaintiff the court's form for filing a
19 civil rights action.

20 DATED: January 29, 2009.

21
22 
23 _____
24 DALE A. DROZD
25 UNITED STATES MAGISTRATE JUDGE

24 DAD:9
25 pier1148.14a(2)