

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

LARRY GANNER, No. CIV S-08-1445 GGH P

VS.

C/O GIBSON, et al., ORDER

Plaintiff is a prisoner at the San Joaquin County Jail, proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis.

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

21 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28  
22 U.S.C. §§ 1914(a), 1915(b)(1). No initial filing fee will be assessed by this order. 28 U.S.C.  
23 § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the filing  
24 fee from plaintiff's trust account and forward it to the Clerk of the Court. Plaintiff will be  
25 obligated for monthly payments of twenty percent of the preceding month's income credited to  
26 plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to

1 the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing  
2 fee is paid in full. 28 U.S.C. § 1915(b)(2).

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

9                   A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
11 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
15 Cir. 1989); Franklin, 745 F.2d at 1227.

16                   A complaint must contain more than a "formulaic recitation of the elements of a  
17 cause of action;" it must contain factual allegations sufficient to "raise a right to relief above the  
18 speculative level." Bell Atlantic Corp. v. Twombly, \_\_ U.S. \_\_, 127 S. Ct. 1955, 1965 (2007).  
19 "The pleading must contain something more...than...a statement of facts that merely creates a  
20 suspicion [of] a legally cognizable right of action." Id., quoting 5 C. Wright & A. Miller, Federal  
21 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). In reviewing a complaint under this  
22 standard, the court must accept as true the allegations of the complaint in question, Hospital  
23 Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light  
24 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v.  
25 McKeithen, 395 U.S. 411, 421 (1969).

26 \\\\\\

1 Plaintiff filed his initial complaint on June 24, 2008, and then filed three (3)  
2 motions to supplement the complaint on July 31, 2008, August 27, 2008 and September 12,  
3 2008. Plaintiff's supplements did not contain the factual allegations of the prior pleadings.  
4 Plaintiff will be given leave to file an amended complaint within thirty days from the date of  
5 service of this Order. Plaintiff must include all allegations in the amended complaint. If plaintiff  
6 fails to file an amended complaint, the court will only screen the initial complaint filed on June  
7 24, 2008.

8 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
9 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
10 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms  
11 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless  
12 there is some affirmative link or connection between a defendant's actions and the claimed  
13 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
14 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
15 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board  
16 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  
18 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an  
19 amended complaint be complete in itself without reference to any prior pleading. This is  
20 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.  
21 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original  
22 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an  
23 original complaint, each claim and the involvement of each defendant must be sufficiently  
24 alleged.

25 \\\\\\

26 \\\\\\

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's request to proceed in forma pauperis is granted;
2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

There will be no initial fee. All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections and Rehabilitation filed concurrently herewith.

3. Plaintiff's motions to supplement the complaint (Doc. 9, 11 and 12) are dismissed. Plaintiff is granted leave to file an amended complaint, consistent with the above ruling, within thirty days from the date of service of this Order. Failure to file an amended complaint will result in the court screening only plaintiff's original complaint of June 24, 2008 (Doc. 1).

4. Upon filing an amended complaint or expiration of the time allowed therefor, the court will make further orders for service of process upon some or all of the defendants.

DATED: January 20, 2009

/s/ Gregory G. Hollows

---

GREGORY G. HOLLOWSS  
UNITED STATES MAGISTRATE JUDGE

ggh: ab  
gann1445.scrn