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

DOUGLAS WHITE,

Plaintiff,

No. CIV S-08-2365 GGH P

vs.

CSP SOLANO, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner 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. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

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.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$7.72 will be assessed by this order. 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 trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the

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

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

1 The complaint names as defendants: California State Prison - Solano, Nurse  
2 Crisson-Phoummathep, N. Grannis the chief of inmate appeals and the California State Prison -  
3 Solano medical department. Plaintiff may have a colorable claim for violations of the Eighth  
4 Amendment. However, other than one vague reference to Nurse Crisson-Phoummathep, plaintiff  
5 does not specify how defendants were responsible for the alleged constitutional deprivation.  
6 Plaintiff must identify individual defendants and describe their actions as the court cannot serve  
7 entities such as the CSP-Solano medical department. Plaintiff's complaint is dismissed with  
8 leave to file an amended complaint within thirty days from the date of service of this Order.

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

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

15 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
16 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
17 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
18 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the  
19 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
20 omits to perform an act which he is legally required to do that causes the deprivation of which  
21 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

22 Moreover, supervisory personnel are generally not liable under § 1983 for the  
23 actions of their employees under a theory of respondeat superior and, therefore, when a named  
24 defendant holds a supervisory position, the causal link between him and the claimed  
25 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862  
26 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.  
941 (1979). Vague and conclusory allegations concerning the involvement of official personnel  
in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th

1 Cir. 1982).

2 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
3 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
4 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms  
5 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless  
6 there is some affirmative link or connection between a defendant's actions and the claimed  
7 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
8 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
9 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board  
10 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

19 Accordingly, IT IS HEREBY ORDERED that:

20 1. Plaintiff's request to proceed in forma pauperis is granted;

21 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

22 Plaintiff is assessed an initial partial filing fee of \$7.72. All fees shall be collected and paid in  
23 accordance with this court's order to the Director of the California Department of Corrections  
24 and Rehabilitation filed concurrently herewith.

25 3. Plaintiff's complaint is dismissed for the reasons discussed above, with leave  
26 to file an amended complaint within thirty days from the date of service of this Order.

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

3 DATED: January 29, 2009

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5   /s/ Gregory G. Hollows

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7 GREGORY G. HOLLOWS  
8 UNITED STATES MAGISTRATE JUDGE

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