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

WILBUR PITTMAN,

Plaintiff,

No. CIV S-08-2806 DAD P

vs.

N. GRANNIS,

Defendant.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and seeks relief pursuant to 42 U.S.C. § 1983. Plaintiff has not paid the required filing fee of \$350.00 or filed an application to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a) & 1915(a). Plaintiff will be granted thirty days to pay the filing fee in full or submit a properly completed application to proceed in forma pauperis.

Plaintiff is cautioned that the in forma pauperis application form includes a section that must be completed by a prison official, and the form must be accompanied by a certified copy of plaintiff's prison trust account statement for the six-month period immediately preceding the filing of this action.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.

1 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
2 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be
3 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
4 U.S.C. § 1915A(b)(1) & (2).

5 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
6 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
7 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
8 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
9 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
10 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
11 Cir. 1989); Franklin, 745 F.2d at 1227.

12 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
13 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
14 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
15 Corp. v. Twombly, 550 U.S. 544, ___, 127 S. Ct. 1955, 1964 (2007) (quoting Conley v. Gibson,
16 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for failure to state a claim a
17 complaint must contain more than “a formulaic recitation of the elements of a cause of action;” it
18 must contain factual allegations sufficient “to raise a right to relief above the speculative level.”
19 Bell Atlantic, 127 S. Ct. at 1965. In reviewing a complaint under this standard, the court must
20 accept as true the allegations of the complaint. See Hospital Bldg. Co. v. Rex Hosp. Trustees,
21 425 U.S. 738, 740 (1976). The court must also construe the pleading in the light most favorable
22 to the plaintiff and resolve all doubts in the plaintiff’s favor. See Jenkins v. McKeithen, 395 U.S.
23 411, 421 (1969).

24 The allegations in plaintiff’s complaint are so vague and incomprehensible that
25 the court is unable to determine whether the current action is frivolous or fails to state a claim for
26 relief. The complaint does not contain a short and plain statement as required by Fed. R. Civ. P.

1 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair
2 notice to the defendants and must allege facts that support the elements of the claim plainly and
3 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
4 must allege with at least some degree of particularity overt acts which defendants engaged in that
5 support his claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R.
6 Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an
7 amended complaint.

8 If plaintiff chooses to file an amended complaint, plaintiff must demonstrate how
9 the conditions complained of resulted in a deprivation of plaintiff's federal constitutional or
10 statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The amended complaint
11 must allege in specific terms how each named defendant was involved in the deprivation of
12 plaintiff's rights. There can be no liability under 42 U.S.C. § 1983 unless there is some
13 affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo
14 v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v.
15 Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations of official
16 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
17 268 (9th Cir. 1982).

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

25 Plaintiff is also advised that defendant Grannis, as the Chief of Inmates Appeals,
26 holds a supervisory position. Supervisory personnel are generally not liable under § 1983 for the

1 actions of their employees under a theory of respondeat superior and, therefore, when a named
2 defendant holds a supervisorial position, the causal link between him and the claimed
3 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
4 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
5 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
6 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
7 Cir. 1982).

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff shall submit, within thirty days from the date of this order, either the
10 \$350.00 filing fee or a properly completed application to proceed in forma pauperis on the form
11 provided with this order.

12 2. Plaintiff's complaint is dismissed.

13 3. 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"; plaintiff must
17 use the form complaint provided by the court.

18 4. The Clerk of the Court is directed to provide plaintiff with the court's form
19 complaint for a § 1983 action and the Application to Proceed In Forma Pauperis By a Prisoner
20 for use in a civil rights action.

21 5. Plaintiff's failure to comply with this order will result in a recommendation
22 that this action be dismissed without prejudice.

23 DATED: April 3, 2009.

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25 DAD:4
26 pit2806.14



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE