

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

SOLOMON FARR,

Plaintiff, No. CIV S-08-2974 GGH P

VS.

SOLANO COUNTY,

Defendant. 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 \$31.15 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 Solano County as the sole defendant. Plaintiff states that
2 Taylor and Martinez¹ work for a company called Court Transportation and drove the vehicle that
3 transferred plaintiff from Solano County Jail to High Desert State Prison. Plaintiff alleges that
4 the trip took eight days and he was “laid over twice” at county jails. Plaintiff alleges he was
5 shackled and handcuffed while in the vehicle for nearly the entire trip and only allowed to
6 shower once and brush his teeth twice. Plaintiff states that he was exposed to second hand
7 smoke and the drivers took turns driving while the other one slept.

8 Plaintiff’s claims appear to fall under the Eighth Amendment, but do not rise to
9 the level of a constitutional violation. Whitley v. Albers, 475 U.S. 312, 319, 106 S. Ct. 1078,
10 1084 (1986) [citations omitted]. “[W]henever prison officials stand accused of using excessive
11 physical force in violation of the [Eighth Amendment], the core judicial inquiry is...whether force
12 was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically
13 to cause harm.” Hudson v. McMillian, 503 U.S. 1, 6-7, 112 S. Ct. 995, 999 (1992).

14 When determining whether the force was excessive, we look to the “extent of the
15 injury..., the need for application of force, the relationship between that need and the amount of
16 force used, the threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to
17 temper the severity of a forceful response.’” Hudson, 503 U.S. at 7, 112 S. Ct. at 999. Plaintiff
18 simply does not make a viable excessive force claim where he alleges that he was handcuffed and
19 shackled for an extended period of time and it was difficult to sleep. Plaintiff neither claims that
20 he was in any pain while restrained, that the restraint was too tight, nor that he informed
21 defendants of any discomfort while he was placed in the handcuffs.

22 Furthermore, plaintiff does not identify each defendants’ actions. Plaintiff must
23 specify how the individual defendants were responsible for the alleged constitutional deprivation,
24 as the court cannot serve entities such as Solano County. Plaintiff’s complaint is dismissed with
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26 ¹ Plaintiff does not provide first names.

1 leave to file an amended complaint within thirty days from the date of service of this Order.

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

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

6 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
7 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
8 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
9 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
10 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or
11 omits to perform an act which he is legally required to do that causes the deprivation of which
12 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

21 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
22 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See
23 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
24 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
25 there is some affirmative link or connection between a defendant’s actions and the claimed
26 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.

1 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
2 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board
3 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

12 Accordingly, IT IS HEREBY ORDERED that:

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

15 Plaintiff is assessed an initial partial filing fee of \$31.15. All fees shall be collected and paid in
16 accordance with this court's order to the Director of the California Department of Corrections
17 and Rehabilitation filed concurrently herewith.

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

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

22 DATED: January 29, 2009

23 /s/ Gregory G. Hollows
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GREGORY G. HOLLOWS
26 UNITED STATES MAGISTRATE JUDGE
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