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

REYNALDO JOSHUA CASTILLO,

Plaintiff,

No. CIV S 08-3080 GGH P

vs.

SOLANO COUNTY JAIL, 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 \$ 22.67 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 states a colorable claim for relief against defendant Solano County  
2 Jail, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b).

3           However, while plaintiff appears to have made a colorable claim for relief against  
4 Solano County under a Monell<sup>1</sup> based jail policy of failing to segregate inmates with contagious  
5 medical conditions, plaintiff has failed to identify any individual defendants against whom he  
6 may seek to proceed seeking damages in relation to any injuries he may have suffered as a result  
7 of the alleged policy. While not dismissing plaintiff's claims against Solano County Jail, the  
8 court will dismiss plaintiff's generic claims against defendants Solano County Jail custody staff  
9 and medical staff, but plaintiff will be granted leave to amend, naming individual defendants,  
10 within thirty days.

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

20           In addition, plaintiff is informed that the court cannot refer to a prior pleading in  
21 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an  
22 amended complaint be complete in itself without reference to any prior pleading. This is  
23 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.  
24 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original  
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26           <sup>1</sup> Monell v. Department of Social Servs., 436 U.S. 658, 98 S. Ct. 2018 (1978).

1 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an  
2 original complaint, each claim and the involvement of each defendant must be sufficiently  
3 alleged.

4 Accordingly, IT IS HEREBY ORDERED that:

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

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

7 Plaintiff is assessed an initial partial filing fee of \$22.67. All fees shall be collected and paid in  
8 accordance with this court's order to the Director of the California Department of Corrections  
9 and Rehabilitation filed concurrently herewith.

10 3. Plaintiff's claims against defendants Solano County Jail custody staff and  
11 medical staff are dismissed for the reasons discussed above, with leave to file an amended  
12 complaint within thirty days from the date of service of this Order. Failure to file an amended  
13 complaint will result in a recommendation that these defendants be dismissed from this action.

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

16 DATED: January 12, 2009

17 /s/ Gregory G. Hollows

18 \_\_\_\_\_  
19 GREGORY G. HOLLOWS  
20 UNITED STATES MAGISTRATE JUDGE

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