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

RICHARD L. PROCTOR, JR.,

Plaintiff,

No. CIV S-08-3158 GGH P

vs.

T. FELKER, 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). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be collected

1 and forwarded by the appropriate agency to the Clerk of the Court each time the amount in
2 plaintiff's account exceeds \$10.00, until the filing 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).

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1 Named as defendants are T. Felker, T. Perez, R.K. Wong and M. Runnels.
2 Plaintiff alleges that on October 31, 2007, he was placed in administrative segregation (ad seg)
3 after prison officials accused him of being an East Coast Crip and being involved in East Coast
4 Crip gang activity. At the time, plaintiff told prison officials that he was a Harlem Crip. Plaintiff
5 alleges that after he was placed in ad seg, he was found hanging in his cell. It was later
6 determined that plaintiff suffered a mental breakdown.

7 As relief, plaintiff seeks expungement of the related rules violation report from his
8 central file, a release to the general population and money damages.

9 Plaintiff does not allege how any of the named defendants were involved in the
10 alleged deprivations. The Civil Rights Act under which this action was filed provides as
11 follows:

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

1 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
2 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
3 Cir. 1982).

4 Because plaintiff has failed to link defendants to the alleged deprivation, the
5 complaint is dismissed with leave to amend. If plaintiff files an amended complaint, he must
6 describe what each defendant did to allegedly violate his constitutional rights.

7 If plaintiff files an amended complaint, he should also clarify why his placement
8 in ad seg caused him to attempt suicide. Without this information, the court may not be able to
9 find that plaintiff has stated a colorable claim for relief.

10 While plaintiff seeks expungement of the rules violation report, he includes no
11 specific allegations regarding this matter. The exhibits attached to the complaint indicate that the
12 rules violation was dismissed on appeal. In the amended complaint, plaintiff should clarify his
13 claims regarding the rules violation report. He should not rely on exhibits to state his factual
14 allegations for him.

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
16 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
17 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
18 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
19 there is some affirmative link or connection between a defendant's actions and the claimed
20 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
21 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
22 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board
23 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

24 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
25 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
26 amended complaint be complete in itself without reference to any prior pleading. This is

1 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
2 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
3 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
4 original complaint, each claim and the involvement of each defendant must be sufficiently
5 alleged.

6 In accordance with the above, IT IS HEREBY ORDERED that:

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

9 The fee shall be collected and paid in accordance with this court's order to the Director of the
10 California Department of Corrections and Rehabilitation filed concurrently herewith.

11 3. The complaint is dismissed for the reasons discussed above, with leave to file
12 an amended complaint within thirty days from the date of service of this order. Failure to file an
13 amended complaint will result in a recommendation that the action be dismissed.

14 DATED: January 20, 2009

15 /s/ Gregory G. Hollows

16 UNITED STATES MAGISTRATE JUDGE

17 proc3158.b