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

SAMUEL H. TUCKER,

Plaintiff,

No. CIV S-09-0087 GGH P

vs.

D. CALVIN, et al.,

Defendants.

ORDER

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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, 550 U.S. 544, 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           The complaint states a colorable claim for relief against defendant Calvin  
2 pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b).

3           The complaint contains no specific allegations against defendants Pfadt, Shaver  
4 and Smith. The Civil Rights Act under which this action was filed provides as follows:

5                   Every person who, under color of [state law] . . . subjects, or causes  
6 to be subjected, any citizen of the United States . . . to the  
7 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.

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

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

23           Because plaintiff has failed to link defendants Pfadt, Shaver and Smith to the  
24 alleged deprivations, the claims against these defendants are dismissed. If plaintiff files an  
25 amended complaint, he must set forth how each of these defendants violated his constitutional  
26 rights.

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

9           Plaintiff has requested the appointment of counsel. The United States Supreme  
10 Court has ruled that district courts lack authority to require counsel to represent indigent  
11 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In  
12 certain exceptional circumstances, the court may request the voluntary assistance of counsel  
13 pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);  
14 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court  
15 does not find the required exceptional circumstances. Plaintiff's request for the appointment of  
16 counsel will therefore be denied.

17           Accordingly, IT IS HEREBY ORDERED that:

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

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

22           3. Plaintiff's claims against Pfadt, Shaver and Smith are dismissed for the reasons  
23 discussed above, with leave to file an amended complaint within thirty days from the date of  
24 service of this Order. Failure to file an amended complaint will result in a recommendation that  
25 these defendants be dismissed from this action.

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