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

JEFFERY BROADWAY,

Plaintiff,

No. CIV S-09-0192 GGH P

vs.

LYNN, 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 gravamen of plaintiff's claim is that he was subjected to excessive force in  
2 violation of his rights under the Eighth Amendment. The form that this force took was that,  
3 while or after plaintiff, handcuffed and straddling a chair, was undergoing a suicide assessment  
4 and expressing fear (for an unexplained reason) of returning to B-Facility in High Desert State  
5 Prison, he was grabbed, lifted, placed in a wheelchair, pulled into a hall and a sheet was double-  
6 wrapped tightly around him. Plaintiff claims that he was unable to move due to the handcuffs  
7 which caused him severe pain in his left shoulder. Plaintiff was wheeled to a transportation van,  
8 lifted into the van via a wheelchair lift and held in place. Plaintiff was taken back to B-Facility,  
9 removed from the van via the wheelchair lift, untied from the wheelchair and told to step into the  
10 holding cage, which he did without incident. Plaintiff complains that the incident caused him  
11 mental stress, drove his blood pressure very high, and that he takes Ibuprofen for his shoulder  
12 pain and is awaiting further treatment. Plaintiff further alleges that he suffered a relapse into  
13 depression, underwent psychiatric treatment and also is prescribed depression medication.  
14 Complaint, pp. 8-13. Plaintiff seeks compensatory and punitive money damages. *Id.*, at 20.

15           While defendant believes that he should have been given direct orders before  
16 force to move him was attempted and there is little doubt plaintiff's dignity was affronted by the  
17 manner of his transport, what he has described does not constitute a violation of his rights under  
18 the Eighth Amendment. "[W]henver prison officials stand accused of using excessive physical  
19 force in violation of the [Eighth Amendment], the core judicial inquiry is...whether force was  
20 applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to  
21 cause harm." Hudson v. McMillian, 503 U.S. 1, 6-7, 112 S. Ct. 995, 999 (1992), citing Whitley  
22 v. Albers, 475 U.S. 312, 106 S.Ct. 1078 (1986). When determining whether the force was  
23 excessive, we look to the "extent of the injury..., the need for application of force, the  
24 relationship between that need and the amount of force used, the threat 'reasonably perceived by  
25 the responsible officials,' and 'any efforts made to temper the severity of a forceful response.'" Hudson,  
26 supra, at 7, 112 S. Ct. at 999.

1           While de minimis uses of physical force generally do not implicate the Eighth  
2 Amendment, significant injury need not be evident in the context of an excessive force claim,  
3 because “[w]hen prison officials maliciously and sadistically use force to cause harm,  
4 contemporary standards of decency always are violated.” Hudson, *supra*, at 9, 112 S. Ct. at 1000,  
5 citing Whitley, at 327, 106 S.Ct., at 1088.

6           Plaintiff has set forth far too little of a factual basis to show that what he was  
7 subjected to was a malicious and sadistic use of force intended to cause harm. His references to a  
8 relapse into depression appear on the face of it to be just as, if not more, related to the reason he  
9 was undergoing a suicide assessment in the first place, rather than the incident that ensued. The  
10 alleged injury to his shoulder in no way appears to have been intended. The complaint will be  
11 dismissed, but plaintiff will be given leave to amend.

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

21           In addition, plaintiff is informed that the court cannot refer to a prior pleading in  
22 order to make plaintiff’s amended complaint complete. Local Rule 15-220 requires that an  
23 amended complaint be complete in itself without reference to any prior pleading. This is  
24 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.  
25 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original  
26 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an

1 original complaint, each claim and the involvement of each defendant must be sufficiently  
2 alleged.

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

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

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

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

11 DATED: April 17, 2009

12 /s/ Gregory G. Hollows

13 UNITED STATES MAGISTRATE JUDGE  
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