

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

STEVEN M. HENSON,

Plaintiff, No. CIV S-09-0553 DAD P

VS.

UNKNOWN,

Defendants. ORDER

Plaintiff, currently confined at Solano County Jail, is proceeding pro se and pursuant to 42 U.S.C. § 1983. In accordance with the court's March 6, 2009 order, Plaintiff filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. This application was referred to the undersigned magistrate judge in accordance with Local Rule 72-S.C. § 636(b)(1).

Plaintiff has submitted an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, plaintiff will be granted leave to proceed in forma pauperis.

24 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. See  
25 28 U.S.C. §§ 1914(a) & 1915(b)(1). An initial partial filing fee of \$13.90 will be assessed by this  
26 order. See 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate

1 agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the  
2 Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of twenty  
3 percent of the preceding month's income credited to plaintiff's trust account. These payments  
4 will be collected and forwarded by the appropriate agency to the Clerk of the Court each time the  
5 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. See 28 U.S.C.  
6 § 1915(b)(2).

7 The court is required to screen complaints brought by prisoners seeking relief  
8 against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.  
9 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised  
10 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
11 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
12 U.S.C. § 1915A(b)(1) & (2).

13 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
14 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
15 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
16 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
17 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
18 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
19 Cir. 1989); Franklin, 745 F.2d at 1227.

20 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and  
21 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
23 Corp. v. Twombly, 550 U.S. 544, \_\_\_, 127 S. Ct. 1955, 1965 (2007) (quoting Conley v. Gibson,  
24 355 U.S. 41, 47 (1957)). However, in order to survive dismissal for failure to state a claim a  
25 complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it  
26 must contain factual allegations sufficient "to raise a right to relief above the speculative level."

1        Bell Atlantic, 127 S. Ct. at 1965. In reviewing a complaint under this standard, the court must  
2        accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital  
3        Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the  
4        plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421  
5        (1969).

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

7                Every person who, under color of [state law] . . . subjects, or causes  
8        to be subjected, any citizen of the United States . . . to the  
9        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.

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

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

25                Plaintiff commenced this action by filing two identical letters directed to the  
26        court, a government tort claims form, and a copy of an inmate grievance form. The Clerk of the

1 Court construed these documents as a civil rights complaint and opened this § 1983 action. In  
2 these documents, plaintiff appears to complain about conditions of confinement at the Solano  
3 County Jail. Specifically, plaintiff appears to claim that he surrendered himself to jail officials  
4 on December 22, 2008, and not long thereafter, began working in the jail kitchen. However, jail  
5 officials told him several weeks later than he could no longer work in the kitchen. According to  
6 plaintiff, jail officials revoked his job privileges because of his medical conditions. Plaintiff  
7 appears to claim that jail officials have discriminated against him and are improperly denying  
8 him work-time credits and the ability to earn work-time credits. Plaintiff has not identified any  
9 specific jail officials as defendants in this action nor indicated what he seeks in terms of relief.

10 The allegations in plaintiff's complaint are so vague and conclusory that the court  
11 is unable to determine whether the current action is frivolous or fails to state a claim for relief.  
12 The complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2).  
13 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to  
14 the defendants and must allege facts that support the elements of the claim plainly and succinctly.  
15 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege  
16 with at least some degree of particularity overt acts which defendants engaged in that support his  
17 claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P.  
18 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an  
19 amended complaint.

20 If plaintiff elects to pursue this action by filing an amended complaint, he is  
21 advised that all defendants must be identified in the caption of his pleading and that all  
22 defendants must be named, with position and place of employment, in the section of the form  
23 designated for that purpose. In addition, in the section of the form complaint in which the  
24 plaintiff is required to set forth a brief statement of the facts of the case, he must describe how  
25 each defendant has deprived him of his constitutional rights. There can be no liability under 42  
26 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions

1 and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d  
2 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and  
3 conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v.  
4 Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

5 If plaintiff files an amended complaint, he is also advised of the following legal  
6 standards that appear to govern his claims. First, to the extent that plaintiff seeks to raise a claim  
7 under the Americans with Disabilities Act (“ADA”), under Title II of the ADA plaintiff must  
8 allege four elements: “(1) he is an individual with a disability; (2) he was otherwise qualified to  
9 participate in or receive the benefit of some public entity’s services, programs, or activities; (3)  
10 he was either excluded from participation in or denied the benefits of the public entity’s services  
11 ... or was otherwise discriminated against by the public entity; and (4) such exclusion, denial ...  
12 or discrimination was by reason of his disability.” McGary v. City of Portland, 386 F.3d 1259,  
13 1265 (9th Cir. 2004).

14 In addition, to the extent that plaintiff seeks to raise a claim regarding jail  
15 officials’ failure to provide him with his earned work-time credits, he is advised that this court  
16 cannot award him work-time credits in a § 1983 action. Habeas corpus proceedings are the  
17 proper mechanism for a prisoner seeking to challenge the fact or duration of his confinement.  
18 See Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). Moreover, to the extent that plaintiff seeks  
19 to raise a claim regarding jail officials’ interference with his ability to prospectively earn work-  
20 time credits, he is advised that he has no liberty interest in earning work-time credits or  
21 participating in a work program. See Toussaint v. McCarthy, 8011 F.2d 1080, 1094-95 (9th Cir.  
22 1986).

23 Plaintiff is informed that the court cannot refer to a prior pleading in order to  
24 make plaintiff’s amended complaint complete. Local Rule 15-220 requires that an amended  
25 complaint be complete in itself without reference to any prior pleading. This is because, as a  
26 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375

1 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
2 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
3 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. Plaintiff's April 1, 2009 application to proceed in forma pauperis (Doc. No. 9)  
6 is granted.

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

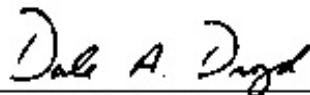
8 Plaintiff is assessed an initial partial filing fee of \$13.90. All fees shall be collected and paid in  
9 accordance with this court's order to the Sheriff of Solano County filed concurrently herewith.

10 3. Plaintiff's complaint is dismissed.

11 4. Plaintiff is granted thirty days from the date of service of this order to file an  
12 amended complaint that complies with the requirements of the Civil Rights Act, the Federal  
13 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the  
14 docket number assigned to this case and must be labeled "Amended Complaint"; failure to file an  
15 amended complaint in accordance with this order will result in a recommendation that this action  
16 be dismissed without prejudice.

17 5. The Clerk of the Court is directed to send plaintiff the court's form for filing a  
18 civil rights action.

19 DATED: April 15, 2009.

20  
21   
22 DALE A. DROZD  
23 UNITED STATES MAGISTRATE JUDGE  
24  
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26

DAD:9  
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