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

10 JOSHUA WOOLRIDGE,

11 Plaintiff,

No. CIV S-09-0734 GGH P

12 vs.

13 CALIFORNIA DEPARTMENT
14 OF CORRECTIONS, et al.,

15 Defendant.

ORDER

16 _____/
17 Plaintiff is a state prisoner proceeding pro se. Plaintiff filed his complaint in state
18 court that was removed to federal court on March 17, 2009. He seeks relief pursuant to 42
19 U.S.C. § 1983, and court records indicate that plaintiff has paid the \$350.00 filing fee in full.
20 Although plaintiff has paid the full filing fee and will not be assessed any further fee, the court
21 herein will permit plaintiff an opportunity to make the required showing pursuant to 28 U.S.C. §
22 1915(a), within thirty days, so that should plaintiff file an amended complaint (see below), also
23 within thirty days, setting forth colorable claims, and should he make the requisite showing to be
24 granted in forma pauperis status, the court would be able to direct the U.S. Marshal's Office to
25 serve any such amended complaint rather than plaintiff being entirely responsible for service of
26 process.

1 The court is required to screen complaints brought by prisoners seeking relief
2 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
3 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
4 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be
5 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
6 U.S.C. § 1915A(b)(1),(2).

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11 granted, or that seek monetary relief from a defendant who is immune from such relief. 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 A complaint must contain more than a “formulaic recitation of the elements of a
21 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
22 speculative level.” Bell Atlantic Corp. v. Twombly, __ U.S. __, 127 S. Ct. 1955, 1965 (2007).
23 “The pleading must contain something more...than...a statement of facts that merely creates a
24 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal
25 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). In reviewing a complaint under this
26 standard, the court must accept as true the allegations of the complaint in question, Hospital

1 Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
2 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v.
3 McKeithen, 395 U.S. 411, 421 (1969).

4 Plaintiff alleges that despite his protests to correctional officers, he was placed in
5 a gang member housing unit where he was assaulted and robbed by other inmates. Plaintiff
6 contends he is not a gang member. Plaintiff names several correctional officers and presents
7 claims of failure to protect and medical deliberate indifference. However, plaintiff does not
8 specify how the individual named defendants were responsible for the alleged constitutional
9 deprivations nor does he provide any facts concerning his medical treatment after the assault.
10 Plaintiff merely lists the defendants and states they were all involved and responsible.

11 As to plaintiff's allegation that he was subjected to a violation of his rights under
12 the Eighth Amendment, it is true that "'prison officials have a duty...to protect prisoners from
13 violence at the hands of other prisoners,'" Farmer v. Brennan, 511 U.S. 825, 833, 114 S.Ct. 1970,
14 1976 (1994), plaintiff does not allege any physical injury resulting to himself. "[A] prison
15 official violates the Eighth Amendment when two requirements are met. First, the deprivation
16 alleged must be, objectively, 'sufficiently serious' ...For a claim (like the one here) based on a
17 failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a
18 substantial risk of serious harm." Id. at 834, 114 S.Ct. at 1977. Second, "[t]o violate the Cruel
19 and Unusual Punishments Clause, a prison officials must have a 'sufficiently culpable state of
20 mind' ... [T]hat state of mind is one of 'deliberate indifference' to inmate health or safety." Id.
21 The prison official will be liable only if "the official knows of and disregards an excessive risk to
22 inmate health and safety; the officials must both be aware of facts from which the inference could
23 be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id.
24 at 837, 114 S.Ct. at 1979.

25 In order to state a § 1983 claim for violation of the Eighth Amendment based on
26 inadequate medical care, plaintiff must allege "acts or omissions sufficiently harmful to evidence

1 deliberate indifference to serious medical needs.” Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct.
2 285, 292 (1976). To prevail, plaintiff must show both that his medical needs were objectively
3 serious, and that defendants possessed a sufficiently culpable state of mind. Wilson v. Seiter,
4 501 U.S. 294, 299, 111 S. Ct. 2321, 2324 (1991); McKinney v. Anderson, 959 F.2d 853 (9th Cir.
5 1992) (on remand). The requisite state of mind for a medical claim is “deliberate indifference.”
6 Hudson v. McMillian, 503 U.S. 1, 4, 112 S. Ct. 995, 998 (1992).

7 A serious medical need exists if the failure to treat a prisoner’s condition could
8 result in further significant injury or the unnecessary and wanton infliction of pain. Indications
9 that a prisoner has a serious need for medical treatment are the following: the existence of an
10 injury that a reasonable doctor or patient would find important and worthy of comment or
11 treatment; the presence of a medical condition that significantly affects an individual’s daily
12 activities; or the existence of chronic and substantial pain. See, e.g., Wood v. Housewright, 900
13 F. 2d 1332, 1337-41 (9th Cir. 1990) (citing cases); Hunt v. Dental Dept., 865 F.2d 198, 200-01
14 (9th Cir. 1989). McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled on other
15 grounds, WMX Technologies v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

16 Plaintiff does not identify each defendants’ actions. Plaintiff must specify how
17 the individual defendants were responsible for the alleged constitutional deprivation. Plaintiff’s
18 complaint is dismissed with leave to file an amended complaint within thirty days from the date
19 of service of this Order.

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

21 Every person who, under color of [state law] . . . subjects, or causes
22 to be subjected, any citizen of the United States . . . to the
23 deprivation of any rights, privileges, or immunities secured by the
24 Constitution . . . shall be liable to the party injured in an action at
25 law, suit in equity, or other proper proceeding for redress.

26 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362

1 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
2 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
3 omits to perform an act which he is legally required to do that causes the deprivation of which
4 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

5 Moreover, supervisory personnel are generally not liable under § 1983 for the
6 actions of their employees under a theory of respondeat superior and, therefore, when a named
7 defendant holds a supervisory position, the causal link between him and the claimed
8 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
9 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
10 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
11 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
12 Cir. 1982).

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

22 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
23 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
24 amended complaint be complete in itself without reference to any prior pleading. This is
25 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
26 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original

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

5 1. Plaintiff has paid the filing fee in full and will be assessed no further filing fee;
6 however, plaintiff is granted leave, within thirty days, to make the requisite showing, pursuant to
7 28 U.S.C. § 1915(a), to proceed in forma pauperis, as set forth above;

8 2. The Clerk of the Court is directed to send plaintiff an Application to Proceed
9 In Forma Pauperis By a Prisoner.

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

13 DATED: March 31, 2009

14 /s/ Gregory G. Hollows

15 GREGORY G. HOLLOWS
16 UNITED STATES MAGISTRATE JUDGE

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