

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 ROBERT N. WASHINGTON,

11 Plaintiff,

No. CIV S-09-0735 DAD P

12 vs.

13 CAL. DEP'T OF CORRS.
14 AND REHABILITATION,

15 Defendant.

ORDER

16 Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42
17 U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915.
18 This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule
19 72-302 and 28 U.S.C. § 636(b)(1).

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

23 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. See
24 28 U.S.C. §§ 1914(a) & 1915(b)(1). Plaintiff has been without funds for six months and is
25 currently without funds. Accordingly, the court will not assess an initial partial filing fee. See 28
26 U.S.C. § 1915(b)(1). Plaintiff will be obligated to make monthly payments of twenty percent of

1 the preceding month's income credited to plaintiff's prison trust account. These payments shall
2 be collected and forwarded by the appropriate agency to the Clerk of the Court each time the
3 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. See 28 U.S.C.
4 § 1915(b)(2).

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

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

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

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

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

22 In the present case, plaintiff has identified the California Department of
23 Corrections and Rehabilitation ("CDCR") as the sole defendant. In his complaint, plaintiff
24 alleges that prison officials at CSP-Solano placed him on C-status as punishment for two rules
25 violations. He further alleges that he was released from C-status forty-two days after his
26 scheduled release date and that he suffered a great deal more than he needed to because he did

1 not have access to a television, radio, or fan to keep him cool. Plaintiff alleges that the felt like
2 committing suicide every day. Plaintiff asks the court to assess a proper amount of compensation
3 for his pain and suffering. (Compl. at 5.)

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

14 If plaintiff elects to proceed with this action by filing an amended complaint, he
15 is advised that the Eleventh Amendment serves as a jurisdictional bar to suits brought by private
16 parties against a state or state agency unless the state or the agency consents to such suit. See
17 Quern v. Jordan, 440 U.S. 332, 340 (1979); Alabama v. Pugh, 438 U.S. 781, 782 (1978); Jackson
18 v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). In the instant case, the CDCR has not
19 consented to suit. Accordingly, if plaintiff presents claims against the CDCR in his amended
20 complaint, the court will recommend that they be dismissed as frivolous.

21 In addition, plaintiff is advised that generally, prison classifications do not give
22 rise to a federal liberty interest under the Fourteenth Amendment. Hernandez v. Johnston, 833
23 F.2d 1316, 1318 (9th Cir. 1987) (citing Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976)).
24 Moreover, although "[s]tates may under certain circumstances create liberty interests which are
25 protected by the Due Process Clause," those circumstances are generally limited to freedom from
26 restraint that "imposes atypical and significant hardship on the inmate in relation to the ordinary

1 incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 483-84 (1995). Thus, it is
2 well-established that inmates do not have a constitutional right to be incarcerated at a particular
3 correctional facility or in a particular cell or unit within a facility. See Meachum v. Fano, 427
4 U.S. 215, 224-25 (1976); Rizzo v. Dawson, 778 F.2d 527, 530 (9th Cir. 1985) (“An inmate’s
5 liberty interests are sufficiently extinguished by his conviction so that the state may change his
6 place of confinement even though the degree of confinement may be different and prison life
7 may be more disagreeable in one institution than in another.”). In this regard, plaintiff’s
8 allegations of a deprivation of rights caused by prison officials’ decisions regarding his place of
9 confinement or housing assignment do not appear to give rise to a federal constitutional claim
10 under the Fourteenth Amendment. See Board of Regents v. Roth, 408 U.S. 564, 569 (1972).

11 Finally, to the extent that plaintiff seeks to raise an Eighth Amendment claim, he
12 is advised that the “unnecessary and wanton infliction of pain” constitutes cruel and unusual
13 punishment prohibited by the United States Constitution. Whitley v. Albers, 475 U.S. 312, 319
14 (1986). See also Ingraham v. Wright, 430 U.S. 651, 670 (1977); Estelle v. Gamble, 429 U.S. 97,
15 105-06 (1976). However, neither accident nor negligence constitutes cruel and unusual
16 punishment, because “[i]t is obduracy and wantonness, not inadvertence or error in good faith,
17 that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause.”
18 Whitley, 475 U.S. at 319. What is needed to show unnecessary and wanton infliction of pain
19 “varies according to the nature of the alleged constitutional violation.” Hudson v. McMillian,
20 503 U.S. 1, 5 (1992) (citing Whitley, 475 U.S. at 320).

21 In an amended complaint, plaintiff must allege facts showing that objectively he
22 suffered a sufficiently serious deprivation and that subjectively each defendant had a culpable
23 state of mind in allowing or causing the plaintiff’s deprivation to occur. Wilson v. Seiter, 501
24 U.S. 294, 298-99 (1991). However, plaintiff is cautioned that the routine discomfort inherent in
25 the prison setting is inadequate to satisfy the objective prong of an Eighth Amendment inquiry.
26 Only those deprivations denying “the minimal civilized measure of life’s necessities” are

1 sufficiently grave to form the basis of an Eighth Amendment violation.” Rhodes v. Chapman,
2 452 U.S. 337, 347 (1981).

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

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Plaintiff’s March 17, 2009 application to proceed in forma pauperis (Doc. No.
12 2) is granted.

13 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
14 The fee shall be collected and paid in accordance with this court’s order to the Director of the
15 California Department of Corrections and Rehabilitation filed concurrently herewith.

16 3. Plaintiff’s complaint is dismissed.

17 4. Plaintiff is granted thirty days from the date of service of this order to file an
18 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
19 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
20 docket number assigned to this case and must be labeled “Amended Complaint”; failure to file an
21 amended complaint in accordance with this order will result in a recommendation that this action
22 be dismissed without prejudice.

23 /////

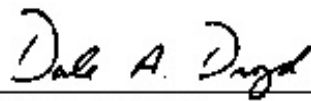
24 /////

25 /////

26 /////

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

3 DATED: April 14, 2009.

4
5 
6 _____
7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

7 DAD:9
8 wash0735.14a
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26