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

KENNETH A. SMITH,

Plaintiff,

No. CIV S-09-1428 GGH P

vs.

CDC, et al.,

Defendants.

ORDER

_____/

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). "[A] complaint must contain sufficient
22 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft
23 v. Iqbal, No. 07-1015, 2009 WL 1361536 at * 12 (May 18, 2009) (quoting Twombly, 550 U.S. at
24 570, 127 S.Ct. 1955). "A claim has facial plausibility when the plaintiff pleads factual content
25 that allows the court to draw the reasonable inference that the defendant is liable for the
26 misconduct alleged." Id.

1 In reviewing a complaint under this standard, the court must accept as true the
2 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
3 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,
4 and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.
5 1843 (1969).

6 Named as defendants are Vacaville State Prison, R.C.C.C. Mental Health
7 Department, C.M.F. Warden and the Captain of the Correctional Mental Health Care
8 Department. Plaintiff appears to allege that defendants failed to provide him with mental health
9 treatment. As a result of this failure, plaintiff was not released sooner from a sentence he is
10 serving for a parole violation. As relief, plaintiff seeks money damages.

11 The Eleventh Amendment bars suits brought by private parties against a state or
12 state agency unless the state or the agency consents to such suit. See Quern v. Jordan, 440 U.S.
13 332, 99 S. Ct. 1139 (1979); Alabama v. Pugh, 438 U.S. 781, 98 S. Ct. 3057 (1978) (per curiam);
14 Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982). Although the Eleventh
15 Amendment is not jurisdictional, the court may raise the defect on its own. Wisconsin
16 Department of Corrections v. Schacht, 524 U.S. 381, 389, 118 S. Ct. 2047, 2052 (1998);
17 Edelman v. Jordan, 415 U.S. 651, 677-78, 94 S. Ct. 1347, 1362-1363 (1974). In the instant case,
18 the State of California has not consented to suit. Accordingly, plaintiff's claims against
19 Vacaville State Prison are frivolous and must be dismissed.

20 It is unclear whether the R.C.C.C. Mental Health Department is an entity that may
21 be sued. For this reason, the claims against this defendant are dismissed with leave to amend so
22 that plaintiff may clarify this matter.

23 With regard to the remaining defendants and R.C.C.C. Mental Health Department,
24 assuming this defendant may be sued, plaintiff has not specifically linked any defendant to the
25 alleged deprivations.

26 ////

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

2 Every person who, under color of [state law] . . . subjects, or causes
3 to be subjected, any citizen of the United States . . . to the
4 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.

5 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
6 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
7 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
8 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
9 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
10 omits to perform an act which he is legally required to do that causes the deprivation of which
11 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

20 Because plaintiff has failed to link these defendants to the alleged deprivations,
21 the claims against them are dismissed with leave to amend.

22 If plaintiff files an amended complaint, plaintiff should not include any claims
23 against Vacaville State Prison as the claims against this defendant are barred by the Eleventh
24 Amendment.

25 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
26 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See

1 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
2 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
3 there is some affirmative link or connection between a defendant's actions and the claimed
4 deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d
5 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,
6 vague and conclusory allegations of official participation in civil rights violations are not
7 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

- 17 1. Plaintiff's request for leave to proceed in forma pauperis (no. 6) is granted.
- 18 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

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

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

24 DATED: August 19, 2009

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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