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

DONALD L. STEVENS,

Plaintiff,

No. CIV S-09-2111 WBS GGH P

vs.

MATT FUCHS, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed January 25, 2010, plaintiff's complaint was dismissed with leave to file an amended complaint. Plaintiff, somewhat belatedly, filed an amended complaint.

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

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28

1 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
3 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
4 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
5 Cir. 1989); Franklin, 745 F.2d at 1227.

6 A complaint must contain more than a “formulaic recitation of the elements of a
7 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
8 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
9 “The pleading must contain something more...than...a statement of facts that merely creates a
10 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal
11 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient
12 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft
13 v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127 S.Ct.
14 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows the
15 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
16 Id.

17 In reviewing a complaint under this standard, the court must accept as true the
18 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
19 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,
20 and resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.
21 1843 (1969).

22 The complaint states a colorable claim for relief against defendant Matt Fuchs for
23 damage to plaintiff’s property pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b).

24 With regard to the allegation that defendant Parole Agent Fuchs, apparently on the
25 look out for the plaintiff who was then on parole, parked behind plaintiff’s residence on February
26 4, 2009, while a twenty-year-old female was inside, plaintiff does not state how such activity in

1 any way violates plaintiff's constitutional rights. Amended Complaint, pp. 4, 7. Nor does there
2 appear to be any such deprivation of the rights of the individual inside the residence even if
3 plaintiff had standing to bring such a claim, which he does not. Plaintiff has already been
4 informed that he does not have standing to assert the rights of third parties. Halet v. Wend Inv.
5 Co., 672 F.2d 1305, 1308 (9th Cir. 1982) (party must assert [his] own rights not those of third
6 parties), citing Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 80, 98
7 S.Ct. 2620, 2634 (1978); Warth v. Seldin, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205 (1974).
8 This claim, to the extent that it was intended to be one, will be dismissed.

9 As to defendant Quentin Campbell, plaintiff makes no allegation against him
10 other than identifying him as the Butte County Parole Supervisor. Complaint, p. 4. The Civil
11 Rights Act under which this action was filed provides as follows:

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

17 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
18 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
19 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
20 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the
21 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
22 omits to perform an act which he is legally required to do that causes the deprivation of which
23 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

24 Moreover, supervisory personnel are generally not liable under § 1983 for the
25 actions of their employees under a theory of respondeat superior and, therefore, when a named
26 defendant holds a supervisory position, the causal link between him and the claimed
27 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
(9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.

1 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
2 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
3 Cir. 1982). This defendant will be dismissed, but plaintiff will have leave to amend.

4 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
5 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
6 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
7 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
8 there is some affirmative link or connection between a defendant's actions and the claimed
9 deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d
10 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,
11 vague and conclusory allegations of official participation in civil rights violations are not
12 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

20 Plaintiff has requested the appointment of counsel. The United States Supreme
21 Court has ruled that district courts lack authority to require counsel to represent indigent
22 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In
23 certain exceptional circumstances, the court may request the voluntary assistance of counsel
24 pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);
25 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court
26 does not find the required exceptional circumstances. Plaintiff's request for the appointment of

1 counsel will therefore be denied.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Plaintiff's claims against defendant Quentin Campbell are dismissed as are any
4 claims by plaintiff against defendant Matt Fuchs with the exception of his claims regarding
5 damaged property, with leave to file a second amended complaint within twenty-eight days from
6 the date of service of this Order. Failure to file a second amended complaint will result in a
7 recommendation that defendant Campbell and certain claims be dismissed from this action.

8 2. Upon filing a second amended complaint or expiration of the time allowed
9 therefor, the court will make further orders for service of process upon some or all of the
10 defendants.

11 3. Plaintiff's March 15, 2010, request for the appointment of counsel (Docket No.
12 17) is denied.

13 DATED: June 3, 2010

14 /s/ Gregory G. Hollows

15 GREGORY G. HOLLOWES
16 UNITED STATES MAGISTRATE JUDGE

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