

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

BILLY J. LACEY,

Plaintiff, No. CIV S-10-0306 FCD GGH F

VS.

DERRAL ADAMS, 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). No initial partial filing fee will be assessed by this order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding

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

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

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

17 A complaint must contain more than a "formulaic recitation of the elements of a
18 cause of action;" it must contain factual allegations sufficient to "raise a right to relief above the
19 speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
20 "The pleading must contain something more...than...a statement of facts that merely creates a
21 suspicion [of] a legally cognizable right of action." Id., quoting 5 C. Wright & A. Miller, Federal
22 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). "[A] complaint must contain sufficient
23 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft
24 v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127 S.Ct. 1955). "A
25 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
26 the reasonable inference that the defendant is liable for the 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 Plaintiff's complaint is sixty pages long with an additional 130 pages of exhibits
7 and names approximately 40 defendants.

8 Plaintiff's main claim involves his classification as a gang member. Plaintiff
9 alleges that in January 2008 and later hearings, Walton, Heckman, Bush, Lanford and Fischer
10 violated his due process rights when placing him in Ad. Seg., by fabricating reports and creating
11 false charges. Along with other fabricated reports and insufficient evidence, plaintiff was then
12 improperly classified as a gang member.

13 Plaintiff alleges that in December 2007, Gangl searched his cell, ransacked it and
14 planted evidence that was then used against plaintiff in the January 2008 hearing that placed him
15 in Ad. Seg.

16 Plaintiff alleges that in December 2008, Skinner, Ayers and Walton retaliated
17 against him for exercising his rights after plaintiff's property was unlawfully confiscated. It is
18 not entirely clear what rights plaintiff was exercising.¹

19 Plaintiff fails to connect most of the remaining thirty defendants to the many
20 claims in the complaint. Plaintiff alleges general claims of religious and racial discrimination as
21 well as violations of the Eighth Amendment. Plaintiff merely concludes that he received an Ad.
22 Seg. term because he is Christian and African-American, but he provides no allegations in
23 support. Likewise, plaintiff concludes the actions were in retaliation for being Christian, but
24 provides no support other than conclusory statements. For the reasons set forth below, plaintiff's

25 ¹ Plaintiff references Exhibit A attached to the complaint, but that exhibit refers to an
26 incident in 2007 regarding a different defendant.

1 complaint will be dismissed with leave to amend. If plaintiff chooses to amend the complaint he
2 should focus on fewer claims and present his claims in a more concise manner.

3 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
4 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
5 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
6 Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964 (2007) (quoting Conley v. Gibson, 355
7 U.S. 41, 47 (1957)).

8 Furthermore, Fed. R. Civ. P. 18(a) provides: “A party asserting a claim to relief as
9 an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent
10 or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an
11 opposing party.” “Thus multiple claims against a single party are fine, but Claim A against
12 Defendant 1 should not be joined with unrelated Claim B against Defendant 2.” George v.
13 Smith, et al., 507 F.3d 605, 607 (7th Cir. 2007). “Unrelated claims against different defendants
14 belong in different suits ...” Id. A “buckshot complaint” complaining that “A defrauded B,
15 defamed him, C punched him, D failed to pay a debt, and E infringed his copyright, all different
16 transactions” should be rejected. Id. at 2.

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

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

21 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
22 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
23 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
24 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
25 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or
26 omits to perform an act which he is legally required to do that causes the deprivation of which

1 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

2 Generally, prison officials’ housing and classification decisions do not give rise to
3 federal constitutional claims encompassed by the protection of liberty and property guaranteed by
4 the Fifth and Fourteenth Amendments. See Board of Regents v. Roth, 408 U.S. 564, 569, 92
5 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Nor does the Constitution guarantee a prisoner placement in
6 a particular prison or protect an inmate against being transferred from one institution to another.
7 Meachum v. Fano, 427 U.S. 215, 223-225, 96 S.Ct. 2532, 2538, 49 L.Ed.2d 451 (1976). See
8 Rizzo v. Dawson, 778 F.2d 527, 530 (9th Cir.1985) (prison authorities may change a prisoner's
9 “place of confinement even though the degree of confinement may be different and prison life
10 may be more disagreeable in one institution than in another” without violating the prisoner's due
11 process rights).

12 In order to frame a retaliation claim, plaintiff must plead facts which suggest that
13 retaliation for the exercise of protected conduct was the “substantial” or “motivating” factor
14 behind the defendant's conduct. Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir.
15 1989); Rizzo 778 F.2d at 532. Plaintiff must also plead facts which suggest an absence of
16 legitimate correctional goals for the conduct he contends was retaliatory. Pratt v. Rowland, 65
17 F.3d 802 (9th Cir. 1995) (citing Rizzo at 532). Mere conclusions of hypothetical retaliation will
18 not suffice, a prisoner must “allege specific facts showing retaliation because of the exercise of
19 the prisoner's constitutional rights.” Frazier v. Dubois, 922 F.2d 560, 562(n .1) (10th Cir. 1990).

20 In Pratt, the Ninth Circuit concluded that in evaluating retaliation claims, courts
21 should defer “to prison officials in the evaluation of proffered legitimate penological reasons for
22 conduct alleged to be retaliatory.” Pratt, 65 F.3d at 807 (citing Sandin v. Conner, 515 U.S. 472,
23 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995)).

24 The Eighth Amendment “requires neither that prisons be comfortable nor that they
25 provide every amenity that one might find desirable.” Hoptowit v. Ray, 682 F.2d 1237, 1246
26 (9th Cir. 1986). “Rather, the Eighth Amendment proscribes the ‘unnecessary and wanton

1 infliction of pain....' " Id. Nevertheless, "[p]rison officials have a duty to ensure that prisoners
2 are provided adequate shelter, food, clothing, sanitation, medical care, and personal safety."
3 Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000), citing, *inter alia*, Farmer v. Brennan, 511
4 U.S. 825, 832, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). When an inmate has been deprived of
5 necessities, "the circumstances, nature and duration of a deprivation ... must be considered in
6 determining whether a constitutional violation has occurred."

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

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
16 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
17 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
18 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
19 there is some affirmative link or connection between a defendant's actions and the claimed
20 deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d
21 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,
22 vague and conclusory allegations of official participation in civil rights violations are not
23 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

24 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
25 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
26 amended complaint be complete in itself without reference to any prior pleading. This is

1 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
2 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
3 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
4 original complaint, each claim and the involvement of each defendant must be sufficiently
5 alleged.

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

7 1. Plaintiff's motion for an extension of time to submit his in forma pauperis
8 application (Doc. 15) is granted and the in forma pauperis application is deemed timely filed;
9 2. Plaintiff's request for leave to proceed in forma pauperis is granted.
10 3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

11 Plaintiff is not assessed an initial partial filing fee. All fees shall be collected and paid in
12 accordance with this court's order to the Director of the California Department of Corrections
13 and Rehabilitation filed concurrently herewith.

14 4. The complaint is dismissed for the reasons discussed above, with leave to file
15 an amended complaint within twenty-eight days from the date of service of this order. Failure to
16 file an amended complaint will result in a recommendation that the action be dismissed.

17 DATED: July 13, 2010

18 /s/ Gregory G. Hollows

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20 GREGORY G. HOLLOWNS
21 UNITED STATES MAGISTRATE JUDGE

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