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

KEITH MICHAEL CASSELLS,

Plaintiff,

No. CIV S-10-0775 DAD P

vs.

D. LIGGETT,

Defendant.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action originally filed in the Solano County Superior Court on December 18, 2009.<sup>1</sup> On April 1, 2010, defendant filed a notice of removal of action under 28 U.S.C. § 1441(b).

**PLAINTIFF’S OBJECTIONS TO REMOVAL**

On April 22, 2010, plaintiff filed written objections to the removal of this action. Plaintiff argues that defendant’s motivation for seeking removal was simply to “make it difficult for plaintiff to bring forth his many witnesses.” Plaintiff explains that if his action is removed to this court, he would be unable to afford the fees and traveling expenses for all the witnesses that he intends to have testify at his trial.

\_\_\_\_\_ <sup>1</sup> The original complaint was designated as Cassells v. Liggett, Case No. FCM112066 by the Solano County Superior Court.

1 A defendant may remove “any civil action brought in a State court of which the  
2 district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). Federal  
3 district courts “shall have original jurisdiction of all civil actions arising under the Constitution,  
4 laws, or treaties of the United States.” 28 U.S.C. § 1331. “The burden of establishing federal  
5 jurisdiction falls on the party invoking removal.” Harris v. Provident Life & Accidental Ins. Co.,  
6 26 F.3d 930, 932 (9th Cir. 1994) (quoting Guold v. Mut. Life Ins. Co. of New York, 790 F.2d  
7 769, 771 (9th Cir. 1986)). The party invoking removal must demonstrate that the resolution of  
8 the federal question plays “a significant role in the proceedings.” Hunter v. United Van Lines,  
9 746, F.2d 635, 646 (9th Cir. 1984).

10 Here, defendant has met his burden of establishing federal jurisdiction over this  
11 matter. In his complaint, plaintiff does not cite to or allege any violations of state law. Rather,  
12 plaintiff seeks monetary damages for the “constitutional violation of [his] civil rights.” (Notice  
13 of Removal, Ex. B.) Specifically, he alleges that defendant, a correctional officer at California  
14 Medical Facility State Prison, used unnecessary and excessive force against him. Because such  
15 claims are cognizable under the Eighth Amendment of the United States Constitution, this court  
16 has subject matter jurisdiction pursuant to 42 U.S.C. § 1983. Accordingly, the court finds that  
17 removal of this action to this court is proper.

#### 18 **SCREENING REQUIREMENT**

19 The court is required to screen complaints brought by prisoners seeking relief  
20 against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.  
21 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised  
22 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be  
23 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
24 U.S.C. § 1915A(b)(1) & (2).

25 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
26 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 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and  
7 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
8 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic  
9 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47  
10 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must  
11 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain  
12 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,  
13 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
14 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
15 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
16 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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  
20 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.

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

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1 omits to perform an act which he is legally required to do that causes the deprivation of which  
2 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

#### 10 **PLAINTIFF’S COMPLAINT**

11 In his short complaint, plaintiff names Correctional Officer Liggett as the sole  
12 defendant. Plaintiff alleges that defendant Liggett used his forearm and chest to “body check”  
13 plaintiff in the chest. Plaintiff also alleges that he is a medically disabled prisoner, and that he  
14 did not provoke defendant Liggett. In terms of relief, plaintiff seeks monetary damages. (Notice  
15 of Removal, Ex. B.)

#### 16 **DISCUSSION**

17 The allegations in plaintiff’s complaint are so vague and conclusory that the court  
18 is unable to determine whether the current action is frivolous or fails to state a claim for relief.  
19 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to  
20 the defendants and must allege facts that support the elements of the claim plainly and succinctly.  
21 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege  
22 with at least some degree of particularity overt acts which defendants engaged in that support his  
23 claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P.  
24 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an  
25 amended complaint.

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1 **CONCLUSION**

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Plaintiff's complaint is dismissed;

4 2. Plaintiff is granted thirty days from the date of service of this order to file an  
5 amended complaint that complies with the requirements of the Civil Rights Act, the Federal  
6 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the  
7 docket number assigned to this case and must be labeled "Amended Complaint;" failure to file an  
8 amended complaint in accordance with this order will result in a recommendation that this action  
9 be dismissed without prejudice;

10 3. The Clerk of the Court is directed to send plaintiff the court's form for filing a  
11 civil rights action; and

12 4. Plaintiff's April 30, 2010 "motion for correction of error" (Doc. No. 12) is  
13 denied as moot.

14 DATED: May 4, 2010.

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16 \_\_\_\_\_  
17 DALE A. DROZD  
18 UNITED STATES MAGISTRATE JUDGE

18 DAD:sj  
19 cass0775.14a