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

TYSON JOIEL SUGGS,

Plaintiff,

No. CIV S-10-0799 GGH P

vs.

JOHN MARSHALL, 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.

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).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
7 Cir. 1989); Franklin, 745 F.2d at 1227.

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

19 In reviewing a complaint under this standard, the court must accept as true the
20 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
21 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,
22 and resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.
23 1843 (1969).

24 Plaintiff’s complaint alleges two separate incidents, one occurring at the
25 Sacramento County Jail and the other at Corcoran State Prison. In both claims, plaintiff alleges
26 that he was attacked by other inmates. In all other respects, the incidents are unrelated.

1 Fed. R. Civ. P. 18(a) provides: “A party asserting a claim to relief as an original
2 claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as
3 alternate claims, as many claims, legal, equitable, or maritime as the party has against an
4 opposing party.” “Thus multiple claims against a single party are fine, but Claim A against
5 Defendant 1 should not be joined with unrelated Claim B against Defendant 2.” George v.
6 Smith, 507 F.3d 605, 607 (7th Cir. 2007). “Unrelated claims against different defendants belong
7 in different suits[.]” Id.

8 It is true that Fed. R. Civ. P. 20(a) provides that “[a]ll persons ...may be joined in
9 one action as defendants if there is asserted against them jointly, severally, or in the alternative,
10 any right to relief in respect of or arising out of the same transaction, occurrence, or series of
11 transactions or occurrences and if any question of law or fact common to all will arise in the
12 action.” However, “[a] buckshot complaint that would be rejected if filed by a free person – say,
13 a suit complaining that A defrauded the plaintiff, B defamed him, C punched him, D failed to pay
14 a debt, and E infringed his copyright, all in different transactions – should be rejected if filed by a
15 prisoner.” Id. at 607.

16 Plaintiff’s claims regarding the incident at the Sacramento County Jail are
17 unrelated to the claims regarding the incident at Corcoran State Prison. Moreover, Corcoran
18 State Prison is located in the intra-district venue of the Fresno Division of the United States
19 District Court for the Eastern District of California. This “buckshot” claim regarding the
20 incident at Corcoran should be raised in a different action filed in the district court in Fresno.
21 For this reason, plaintiff should not include this claim in an amended complaint.

22 Named as defendants regarding the Sacramento County Jail incident are Deputies
23 White and Larcom and inmates Powell and Hunter. Plaintiff alleges that on January 16, 2004,
24 defendant Powell took a swing at plaintiff in the shower. The next day, defendant Hunter told
25 defendant Powell to fight plaintiff. Defendant Powell then entered plaintiff’s cell and attacked
26 him. Plaintiff’s cellmate pushed “the button,” presumably an emergency button, but there was no

1 response. Less than thirty minutes later, defendant Larcom came on the speaker announcing
2 dayroom for the tier. When the door to plaintiff's cell opened, defendant Powell attempted to
3 enter plaintiff's cell again in order to attack him. As plaintiff was attempting to defend himself,
4 defendant Hunter entered the cell and attacked plaintiff. Plaintiff alleges that defendant Larcom
5 later caught defendant Hunter in his cell attacking him.

6 In order to state a claim under § 1983, a plaintiff must allege that: (1) defendant
7 was acting under color of state law at the time the complained of act was committed; and (2)
8 defendant's conduct deprived plaintiff of rights, privileges or immunities secured by the
9 Constitution or laws of the United States. 42 U.S.C. § 1983; see West v. Atkins, 487 U.S. 42, 48
10 (1988).

11 Defendants Hunter and Powell were inmates in the Sacramento County Jail.
12 Therefore, they were not state actors. Accordingly, the claims against defendants Hunter and
13 Powell are dismissed.

14 The only allegations against defendant Larcom are that he announced dayroom for
15 the tier and later caught inmate Hunter attacking plaintiff. These allegations do not state a
16 constitutional claim against defendant Larcom. Accordingly, the claims against defendant
17 Larcom are dismissed with leave to amend.

18 The complaint contains no allegations against defendant White. The Civil Rights
19 Act under which this action was filed provides as follows:

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

25 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
26 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
(1976). "A person 'subjects' another to the deprivation of a constitutional right, within the

1 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
2 omits to perform an act which he is legally required to do that causes the deprivation of which
3 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

12 Because plaintiff has failed to link defendant White to any alleged deprivations,
13 the claims against him are dismissed with leave to amend.

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

23 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
24 order to make plaintiff’s amended complaint complete. Local Rule 15-220 requires that an
25 amended complaint be complete in itself without reference to any prior pleading. This is
26 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.

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

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

- 6 1. Plaintiff's request for leave to proceed in forma pauperis is granted.
- 7 2. The complaint is dismissed for the reasons discussed above, with leave to file
8 an amended complaint within twenty-eight days from the date of service of this order. Failure to
9 file an amended complaint will result in a recommendation that the action be dismissed.

10 DATED: May 11, 2010

11 /s/ Gregory G. Hollows

12 _____
13 UNITED STATES MAGISTRATE JUDGE

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