

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

GABRIEL TORRES,

Plaintiff, No. CIV S-10-0977 GGH P

VS.

KARINA, Nurse, et. al.,

Defendants. ORDER

Plaintiff is a pretrial detainee 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). An initial partial filing fee of \$8.60 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

1 preceding month's income credited to plaintiff's prison trust account. These payments will be
2 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's
3 account 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 alleges that staff at Solano County Jail failed to provide him with proper
7 medical treatment. However, plaintiff does not describe the medical treatment that was not
8 provided, his medical condition that required care or even the specific defendants who denied
9 him the treatment. Plaintiff's complaint will be dismissed with leave to amend within twenty-
10 eight days of service of this order to provide more specific details.

11 In order to state a § 1983 claim for violation of the Eighth Amendment based on
12 inadequate medical care, plaintiff must allege "acts or omissions sufficiently harmful to evidence
13 deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct.
14 285, 292 (1976). To prevail, plaintiff must show both that his medical needs were objectively
15 serious, and that defendants possessed a sufficiently culpable state of mind. Wilson v. Seiter,
16 501 U.S. 294, 299, 111 S. Ct. 2321, 2324 (1991); McKinney v. Anderson, 959 F.2d 853 (9th Cir.
17 1992) (on remand). The requisite state of mind for a medical claim is "deliberate indifference."
18 Hudson v. McMillian, 503 U.S. 1, 4, 112 S. Ct. 995, 998 (1992).

19 A serious medical need exists if the failure to treat a prisoner's condition could
20 result in further significant injury or the unnecessary and wanton infliction of pain. Indications
21 that a prisoner has a serious need for medical treatment are the following: the existence of an
22 injury that a reasonable doctor or patient would find important and worthy of comment or
23 treatment; the presence of a medical condition that significantly affects an individual's daily
24 activities; or the existence of chronic and substantial pain. See, e.g., Wood v. Housewright, 900
25 F. 2d 1332, 1337-41 (9th Cir. 1990) (citing cases); Hunt v. Dental Dept., 865 F.2d 198, 200-01
26 (9th Cir. 1989). McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled on other

1 grounds, WMX Technologies v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

2 In Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) the
3 Supreme Court defined a very strict standard which a plaintiff must meet in order to establish
4 “deliberate indifference.” Of course, negligence is insufficient. Farmer, 511 U.S. at 835, 114
5 S.Ct. at 1978. However, even civil recklessness (failure to act in the face of an unjustifiably high
6 risk of harm which is so obvious that it should be known) is insufficient. Id. at 836-37, 114 S.Ct.
7 at 1979. Neither is it sufficient that a reasonable person would have known of the risk or that a
8 defendant should have known of the risk. Id. at 842, 114 S.Ct. at 1981.

9 It is nothing less than recklessness in the criminal sense-subjective
10 standard-disregard of a risk of harm of which the actor is actually aware. Id. at 838-842, 114
11 S.Ct. at 1979-1981. “[T]he official must both be aware of facts from which the inference could
12 be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Id.
13 at 837, 114 S.Ct. at 1979. Thus, a defendant is liable if he knows that plaintiff faces “a
14 substantial risk of serious harm and disregards that risk by failing to take reasonable measures to
15 abate it.” Id. at 847, 114 S.Ct. at 1984. “[I]t is enough that the official acted or failed to act
16 despite his knowledge of a substantial risk of serious harm.” Id. at 842, 114 S.Ct. at 1981. If the
17 risk was obvious, the trier of fact may infer that a defendant knew of the risk. Id. at 840-42, 114
18 S.Ct. at 1981. However, obviousness per se will not impart knowledge as a matter of law.

19 Furthermore, the Civil Rights Act under which this action was filed provides as
20 follows:

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

1 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
2 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
3 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or
4 omits to perform an act which he is legally required to do that causes the deprivation of which
5 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

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. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

8 Plaintiff is assessed an initial partial filing fee of \$8.60. All fees shall be collected and paid in
9 accordance with this court's order to the Solano County Jail filed concurrently herewith.

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

13 DATED: June 3, 2010

14 /s/ Gregory G. Hollows

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16 GREGORY G. HOLLOWNS
17 UNITED STATES MAGISTRATE JUDGE
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