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

RONNIE E. BARRON,

Plaintiff,

No. CIV S-10-1567 DAD P

vs.

M. MARTEL, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule 302 and 28 U.S.C. § 636(b)(1).

PLAINTIFF’S IN FORMA PAUPERIS APPLICATION

Plaintiff has submitted an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, plaintiff will be granted leave to proceed in forma pauperis.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. See 28 U.S.C. §§ 1914(a) & 1915(b)(1). An initial partial filing fee of \$0.67 will be assessed by this order. See 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate

1 agency to collect the initial partial filing fee from plaintiff's prison trust account and forward it to
2 the Clerk of the Court. Thereafter, plaintiff will be obligated to make monthly payments of
3 twenty percent of the preceding month's income credited to plaintiff's prison trust account.
4 These payments will be collected and forwarded by the appropriate agency to the Clerk of the
5 Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in
6 full. See 28 U.S.C. § 1915(b)(2).

7 **SCREENING REQUIREMENT**

8 The court is required to screen complaints brought by prisoners seeking relief
9 against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C.
10 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
11 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
12 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
13 U.S.C. § 1915A(b)(1) & (2).

14 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
15 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
16 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
17 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
18 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
19 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
20 Cir. 1989); Franklin, 745 F.2d at 1227.

21 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
22 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
23 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
24 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
25 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must
26 contain more than "a formulaic recitation of the elements of a cause of action;" it must contain

1 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell
2 Atlantic, 550 U.S. 555. In reviewing a complaint under this standard, the court must accept as
3 true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees,
4 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and
5 resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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

7 Every person who, under color of [state law] . . . subjects, or causes
8 to be subjected, any citizen of the United States . . . to the
9 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.

10 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
11 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
12 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
13 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
14 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or
15 omits to perform an act which he is legally required to do that causes the deprivation of which
16 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

17 Moreover, supervisory personnel are generally not liable under § 1983 for the
18 actions of their employees under a theory of respondeat superior and, therefore, when a named
19 defendant holds a supervisory position, the causal link between him and the claimed
20 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
21 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory
22 allegations concerning the involvement of official personnel in civil rights violations are not
23 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

24 PLAINTIFF’S COMPLAINT

25 In his complaint, plaintiff has named defendants Martel, Smith, Galloway, Naseer,
26 Todd, and Martinez. (Compl. at 2-3.) Plaintiff appears to inarticulately allege that each of the

1 defendants failed to provide him with adequate medical treatment of his valley fever which
2 resulted in permanent injury to his chest area. (Id. at 3.) In terms of relief, plaintiff seeks
3 monetary damages. (Id.)

4 **DISCUSSION**

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

14 If plaintiff elects to file an amended complaint he is advised of the following legal
15 standards that govern the claim he is apparently attempting to present. The Eighth Amendment
16 prohibits the infliction of “cruel and unusual punishments.” In Estelle v. Gamble, 429 U.S. 97
17 (1976), the United States Supreme Court held that a prison official’s alleged inadequate medical
18 care did not constitute cruel and unusual punishment cognizable under § 1983 unless the alleged
19 mistreatment amounted to a “deliberate indifference to serious medical needs.” Id. at 106. In
20 applying this standard, the Ninth Circuit has held that the “indifference to medical needs must be
21 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this
22 cause of action.” Broughton v. Cutter Lab., 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle,
23 429 U.S. at 105-06).

24 Accordingly, to allege a cognizable inadequate medical care claim here, plaintiff
25 should first allege facts explaining the serious medical condition from which he suffered. In
26 addition, plaintiff should allege facts that demonstrate the defendants were aware of plaintiff’s

1 serious medical condition, but responded with deliberate indifference to his medical needs.
2 Unless plaintiff is able to allege facts providing an affirmative link or connection between each
3 defendant's actions and the claimed constitutional deprivation, there can be no liability under 42
4 U.S.C. § 1983. See May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980).

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

12 **OTHER MATTERS**

13 On August 19, 2010, plaintiff filed a motion requesting that his initial consent to
14 the jurisdiction of the undersigned magistrate judge be withdrawn. The undersigned will honor
15 plaintiff's request.

16 **CONCLUSION**

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

18 1. Plaintiff's July 12, 2010 application to proceed in forma pauperis (Doc. No. 6)
19 is granted.

20 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.
21 Plaintiff is assessed an initial partial filing fee of \$0.67. All fees shall be collected and paid in
22 accordance with this court's order to the Director of the California Department of Corrections
23 and Rehabilitation filed concurrently herewith.

24 3. Plaintiff's complaint is dismissed.

25 4. Plaintiff is granted thirty days from the date of service of this order to file an
26 amended complaint that complies with the requirements of the Civil Rights Act, the Federal

1 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
2 docket number assigned to this case and must be labeled "Amended Complaint"; failure to file an
3 amended complaint in accordance with this order will result in a recommendation that this action
4 be dismissed without prejudice.

5 5. The Clerk of the Court is directed to provide plaintiff with the court's form
6 complaint for a § 1983 action.

7 6. Plaintiff's August 19, 2010 motion to withdraw consent (Doc. No. 7) is
8 granted.

9 7. The Clerk of Court is directed to randomly assign a United States District
10 Judge to this action.

11 DATED: September 1, 2010.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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