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

KHALID HARRISON,

Plaintiff,

No. 2: 10-cv-2659 MCE KJN P

vs.

CALIFORNIA STATE PENITENTIARY
MEDICAL CARE,

Defendant.

ORDER

_____/

Plaintiff is a former state prisoner proceeding without counsel. On February 22, 2011, plaintiff was ordered to show cause why this action should not be dismissed for his failure to file an application to proceed in forma pauperis. On March 1, 2011, plaintiff filed his application to proceed in forma pauperis. Good cause appearing, the order to show cause is discharged.

Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

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.

1 The court is required to screen complaints brought by prisoners seeking relief
2 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
3 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
4 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be
5 granted, or that seek monetary relief from a defendant who is immune from such relief.
6 28 U.S.C. § 1915A(b)(1),(2).

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

14 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
15 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
16 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
17 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
18 (1957)). In order to survive dismissal for failure to state a claim, a complaint must contain more
19 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
20 allegations sufficient “to raise a right to relief above the speculative level.” Id. However,
21 “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the defendant fair
22 notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v. Pardus, 551
23 U.S. 89, 93 (2007) (quoting Bell Atlantic Corp., 550 U.S. at 555) (citations and internal
24 quotations marks omitted). In reviewing a complaint under this standard, the court must accept
25 as true the allegations of the complaint in question, id., and construe the pleading in the light
26 most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

1 Named as defendants are “California State Pen. Medical Care” and unnamed
2 correctional officers. Plaintiff alleges that he received inadequate medical care after being shot
3 in the head with a rubber bullet. As relief, plaintiff seeks money damages.

4 It does not appear that “California State Pen. Medical Care” is an entity that may
5 be served with process. In any event, plaintiff has failed to link this defendant to the alleged
6 deprivations. In fact, plaintiff has not identified any defendant by name.

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

8 Every person who, under color of [state law] . . . subjects, or causes
9 to be subjected, any citizen of the United States . . . to the
10 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.

11 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
12 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
13 Monell v. Department of Social Servs., 436 U.S. 658, 692 (1978) (“Congress did not intend
14 § 1983 liability to attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976)
15 (no affirmative link between the incidents of police misconduct and the adoption of any plan or
16 policy demonstrating their authorization or approval of such misconduct). “A person ‘subjects’
17 another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an
18 affirmative act, participates in another's affirmative acts or omits to perform an act which he is
19 legally required to do that causes the deprivation of which complaint is made.” Johnson v.
20 Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

21 Moreover, supervisory personnel are generally not liable under § 1983 for the
22 actions of their employees under a theory of respondeat superior and, therefore, when a named
23 defendant holds a supervisory position, the causal link between him and the claimed
24 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
25 (9th Cir. 1979) (no liability where there is no allegation of personal participation; Mosher v.
26 Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979) (no liability where

1 there is no evidence of personal participation). Vague and conclusory allegations concerning the
2 involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board
3 of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of
4 personal participation is insufficient).

5 Because plaintiff has failed to link any specific defendant with the alleged
6 deprivations, the complaint is dismissed with leave to amend. If plaintiff files an amended
7 complaint, he must identify defendants by name. In an amended complaint, plaintiff must also
8 describe how each named defendant allegedly violated his constitutional rights.

9 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
10 conditions about which he complains resulted in a deprivation of plaintiff's constitutional rights.
11 Rizzo v. Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms
12 how each named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983
13 unless there is some affirmative link or connection between a defendant's actions and the
14 claimed deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy,
15 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official
16 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
17 268 (9th Cir. 1982).

18 In addition, plaintiff is hereby informed that the court cannot refer to a prior
19 pleading in order to make plaintiff's amended complaint complete. Local Rule 220 requires that
20 an amended complaint be complete in itself without reference to any prior pleading. This
21 requirement exists because, as a general rule, an amended complaint supersedes the original
22 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended
23 complaint, the original pleading no longer serves any function in the case. Therefore, in an
24 amended complaint, as in an original complaint, each claim and the involvement of each
25 defendant must be sufficiently alleged.

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1 On December 22, 2010, plaintiff filed a motion for an extension of time to file an
2 in forma pauperis affidavit. Because plaintiff has now filed his in forma pauperis affidavit, this
3 motion is denied as unnecessary.

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

5 1. Plaintiff's motion to proceed in forma pauperis (Dkt. No. 13) is granted.

6 2. Plaintiff's complaint is dismissed.

7 3. Within thirty days from the date of this order, plaintiff shall complete the
8 attached Notice of Amendment and submit the following documents to the court:

9 a. The completed Notice of Amendment; and


10 b. An original and one copy of the Amended Complaint.

11 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the
12 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
13 also bear the docket number assigned to this case and must be labeled "Amended Complaint."
14 Failure to file an amended complaint in accordance with this order may result in the dismissal of
15 this action.

16 4. Plaintiff's motion for extension of time (Dkt. No. 10) is denied as unnecessary.

17 5. The February 22, 2011 order to show cause is discharged.

18 DATED: March 4, 2011

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21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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IN THE UNITED STATES DISTRICT COURT
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KHALID HARRISON,

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No. 2: 10-cv-2659 MCE KJN P

vs.

CALIFORNIA STATE PENITENTIARY

MEDICAL CARE,

NOTICE OF AMENDMENT

Defendants.

_____ /

Plaintiff hereby submits the following document in compliance with the court's
order filed _____:

_____ Amended Complaint

DATED:

Plaintiff