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

MARIO HAMMONDS, aka
HAQQ SHABAZZ,

Plaintiff,

No. 2:10-cv-3439 KJN P

vs.

WARDEN, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding without counsel. 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.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 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 prison trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to

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

5 The court is required to screen complaints brought by prisoners seeking relief
6 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
7 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
8 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
9 granted, or that seek monetary relief from a defendant who is immune from such relief.
10 28 U.S.C. § 1915A(b)(1),(2).

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
13 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
14 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
15 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
16 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
17 Cir. 1989); Franklin, 745 F.2d at 1227.

18 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and
19 plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
20 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
21 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
22 (1957)). In order to survive dismissal for failure to state a claim, a complaint must contain more
23 than "a formulaic recitation of the elements of a cause of action;" it must contain factual
24 allegations sufficient "to raise a right to relief above the speculative level." Id. However,
25 "[s]pecific facts are not necessary; the statement [of facts] need only 'give the defendant fair
26 notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v. Pardus, 551

1 U.S. 89, 93 (2007) (quoting Bell Atlantic Corp., 550 U.S. at 555) (citations and internal
2 quotations marks omitted). In reviewing a complaint under this standard, the court must accept
3 as true the allegations of the complaint in question, id., and construe the pleading in the light
4 most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

5 Plaintiff alleges a violation of his First Amendment right to practice his religion,
6 both by the refusal to allow him to attend church on Friday, and by the failure to provide him
7 with a Halaal diet.

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

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

14 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
15 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
16 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
17 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
18 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
19 omits to perform an act which he is legally required to do that causes the deprivation of which
20 complaint is made.” Johnson v. 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); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
26 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
Cir. 1982).

1 While plaintiff's claim may state a cognizable civil rights claim, plaintiff has
2 failed to include any charging allegations as to the three named defendants. Plaintiff has failed to
3 identify how each defendant was involved or allege how each defendant personally denied him
4 access to Friday services and/or the provision of the Halaal diet.

5 Accordingly, this court finds the complaint does not contain a short and plain
6 statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible
7 pleading policy, a complaint must give fair notice and state the elements of the claim plainly and
8 succinctly. Jones v. Cmty Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must
9 allege with at least some degree of particularity overt acts which defendants engaged in that
10 support plaintiffs claim. Id. Because plaintiff has failed to comply with the requirements of Fed.
11 R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file
12 an amended complaint.

13 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
14 conditions about which he complains resulted in a deprivation of plaintiff's constitutional rights.
15 Rizzo v. Goode, 423 U.S. 362, 371 (1976). Also, the complaint must allege in specific terms
16 how each named defendant is involved. Id. There can be no liability under 42 U.S.C. § 1983
17 unless there is some affirmative link or connection between a defendant's actions and the
18 claimed deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy,
19 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official
20 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
21 268 (9th Cir. 1982).

22 In addition, plaintiff is hereby informed that the court cannot refer to a prior
23 pleading in order to make plaintiff's amended complaint complete. Local Rule 220 requires that
24 an amended complaint be complete in itself without reference to any prior pleading. This
25 requirement exists because, as a general rule, an amended complaint supersedes the original
26 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended

1 complaint, the original pleading no longer serves any function in the case. Therefore, in an
2 amended complaint, as in an original complaint, each claim and the involvement of each
3 defendant must be sufficiently alleged.

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

5 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

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

7 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
8 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
9 Director of the California Department of Corrections and Rehabilitation filed concurrently
10 herewith.

11 3. Plaintiff's complaint is dismissed.

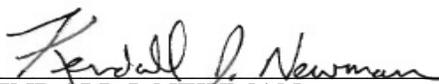
12 4. Within thirty days from the date of this order, plaintiff shall complete the
13 attached Notice of Amendment and submit the following documents to the court:

14 a. The completed Notice of Amendment; and

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

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

21 DATED: January 3, 2011

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24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE

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MARIO HAMMONDS, aka
HAQQ SHABAZZ,

Plaintiff,

No. 2:10-cv-3439 KJN P

vs.

WARDEN, et al.,

NOTICE OF AMENDMENT

Defendants.

_____ /

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

_____ Amended Complaint

DATED:

Plaintiff