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

DAVID REYES,

Plaintiff,

No. CIV S-11-0219 GEB GGH P

vs.

R. MITCHELL, 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 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). Plaintiff will be assessed an initial filing fee of \$1.24. 28 U.S.C. § 1915(b)(1). Plaintiff will be obligated for monthly payments of twenty percent of the preceding month’s income credited to plaintiff’s prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff’s account

1 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

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

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

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

25 In reviewing a complaint under this standard, the court must accept as true the
26 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.

1 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,
2 and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.
3 1843 (1969).

4 Plaintiff's complaint names 22 defendants and raises many claims that apparently
5 occurred at Mule Creek State Prison and Salinas Valley State Prison. Plaintiff is informed that
6 Salinas Valley State Prison is located in the Northern District of California so claims that
7 occurred there are not properly brought in this district.

8 Plaintiff raises claims involving three years he spent in Administrative
9 Segregation resulting from a fraudulent drug charge that was later dismissed. Plaintiff alleges
10 violations of his due process rights, he was assaulted by staff while in Ad. Seg., defendants failed
11 to protect him from other inmates, he was denied access to the courts, he was housed in unsafe
12 living conditions, he was retaliated against by defendants and his property was lost or stolen.
13 Plaintiff also alleges that defendants improperly denied his inmate appeals when he grieved these
14 issues.

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

22 Plaintiff's complaint will be dismissed and he will be granted leave to file an
23 amended complaint within 28 days of service of this order. Plaintiff should not keep the various
24 claims against all the different defendants and must provide additional details regarding the
25 claims he wishes to pursue, identifying the actions of the specific defendants and how they
26 violated his constitutional rights. In addition, as the claims arising from the different institutions

1 are not related, plaintiff should only include claims that occurred at Mule Creek State Prison.

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

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

7 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
8 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
9 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
10 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
11 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
12 omits to perform an act which he is legally required to do that causes the deprivation of which
13 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

14 Furthermore, supervisory personnel are generally not liable under § 1983 for the
15 actions of their employees under a theory of respondeat superior and, therefore, when a named
16 defendant holds a supervisory position, the causal link between him and the claimed
17 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
18 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
19 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
20 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
21 Cir. 1982).

22 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
23 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
24 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
25 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
26 there is some affirmative link or connection between a defendant's actions and the claimed

1 deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d
2 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,
3 vague and conclusory allegations of official participation in civil rights violations are not
4 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

5 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
6 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
7 amended complaint be complete in itself without reference to any prior pleading. This is
8 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
9 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
10 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
11 original complaint, each claim and the involvement of each defendant must be sufficiently
12 alleged.

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

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

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

16 Plaintiff will be assessed an initial filing fee of \$1.24. All fees shall be collected and paid in
17 accordance with this court's order to the Director of the California Department of Corrections
18 and Rehabilitation filed concurrently herewith.

19 3. Plaintiff's complaint is dismissed for the reasons discussed above, with leave
20 to file an amended complaint within twenty-eight days from the date of service of this Order.
21 Failure to file an amended complaint will result in a recommendation that this action be
22 dismissed.

23 DATED: April 20, 2011

24 /s/ Gregory G. Hollows

25 _____
GREGORY G. HOLLOWES
26 UNITED STATES MAGISTRATE JUDGE

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