

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

OSCAR CEASER,

Plaintiff,

vs.

CIV S-11-2231 LKK CKD PS

HOPE ORGANIZATION, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff has not paid the fee ordinarily required to file an action in this court, and failed to timely submit a completed application to proceed without prepayment of fees. The court accordingly recommended the action be dismissed. Plaintiff has now filed a completed application. The recommendation of dismissal will therefore be vacated.

The affidavit submitted by plaintiff shows he is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

1           A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
5 490 U.S. at 327.

6           In order to avoid dismissal for failure to state a claim a complaint must contain  
7 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements  
8 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other  
9 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
10 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a  
11 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.  
12 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
13 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129  
14 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be  
15 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200  
16 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.  
17 Rhodes, 416 U.S. 232, 236 (1974).

18           The court finds the allegations in plaintiff's complaint so vague and conclusory  
19 that it is unable to determine whether the current action is frivolous or fails to state a claim for  
20 relief. The court has determined that the complaint does not contain a short and plain statement  
21 as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading  
22 policy, a complaint must give fair notice and state the elements of the claim plainly and  
23 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff  
24 must allege with at least some degree of particularity overt acts which defendants engaged in that  
25 support plaintiff's claim. Id. Because plaintiff has failed to comply with the requirements of

26 ////

1 Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to  
2 file an amended complaint.

3 Plaintiff does not set forth the jurisdictional ground for this action. It appears  
4 plaintiff may be trying to allege a claim for excessive force under the Civil Rights Act. That  
5 statute provides as follows:

6 Every person who, under color of [state law] . . . subjects, or causes  
7 to be subjected, any citizen of the United States . . . to the  
8 deprivation of any rights, privileges, or immunities secured by the  
9 Constitution . . . shall be liable to the party injured in an action at  
10 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 (1978); Rizzo v. Goode, 423 U.S. 362  
14 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
15 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or  
16 omits to perform an act which he is legally required to do that causes the deprivation of which  
17 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

18 Moreover, supervisory personnel are generally not liable under § 1983 for the  
19 actions of their employees under a theory of respondeat superior and, therefore, when a named  
20 defendant holds a supervisory position, the causal link between him and the claimed  
21 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862  
22 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.  
23 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel  
24 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th  
25 Cir. 1982).

26 It appears from the exhibits attached to the complaint that plaintiff is complaining  
about handcuffs that were applied too tightly. Plaintiff is advised that excessive force claims in  
the context of pretrial detainees are measured by whether the arresting officer’s actions were

1 objectively unreasonable in light of the circumstances. See Lolli v. County of Orange, 351 F.3d  
2 410, 415 (9th Cir. 2003) (explaining that for a pretrial detainee’s excessive force claims, the  
3 question is whether the defendant’s actions are “objectively reasonable” in light of the facts and  
4 circumstances, without regard to underlying intent or motivation); see also Gibson v. County of  
5 Washoe, Nev., 290 F.3d 1175, 1197-98 (9th Cir. 2002) (explaining that the “nature and quality of  
6 the intrusion” on a pretrial detainee’s rights is considered when evaluating an excessive force  
7 claim).

8           Plaintiff names as a defendant the City of Woodland Police Department. No  
9 allegations, however, are made that any official policy gave rise to the alleged constitutional  
10 deprivation. See Monell v. Department of Social Servs., 436 U.S. 658 (1978). As such, a claim  
11 against the police department cannot lie. In addition, there are no charging allegations against  
12 defendants Hope Organization, Angie Barrera or Jeff Rulon.

13           If plaintiff chooses to amend the complaint, plaintiff must set forth the  
14 jurisdictional grounds upon which the court’s jurisdiction depends. Federal Rule of Civil  
15 Procedure 8(a). Further, plaintiff must demonstrate how the conduct complained of has resulted  
16 in a deprivation of plaintiff’s federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

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

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

- 26           1. The findings and recommendation (dkt. no. 4) are vacated;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

- 2. Plaintiff's request to proceed in forma pauperis is granted;
- 3. Plaintiff's complaint is dismissed; and
- 4. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and two copies of the amended complaint; failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: October 11, 2011

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

4  
ceaser.ifp-lta