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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL HICKS,
Plaintiff,
v.
BEHROZ HAMKAR,
Defendants.

No. 2:13-cv-1687 DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se. 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 the undersigned 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). 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 trust account and forward it to the Clerk of the Court. Thereafter, 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

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

3 **SCREENING REQUIREMENT**

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

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

17 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
18 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
19 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
20 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
21 However, in order to survive dismissal for failure to state a claim a complaint must contain more
22 than "a formulaic recitation of the elements of a cause of action;" it must contain factual
23 allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550
24 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
25 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
26 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all
27 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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

2 Every person who, under color of [state law] . . . subjects, or causes
3 to be subjected, any citizen of the United States . . . to the
4 deprivation of any rights, privileges, or immunities secured by the
5 Constitution . . . shall be liable to the party injured in an action at
6 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 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
15 their employees under a theory of respondeat superior and, therefore, when a named defendant
16 holds a supervisory position, the causal link between him and the claimed constitutional
17 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
18 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations
19 concerning the involvement of official personnel in civil rights violations are not sufficient. See
20 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

21 **PLAINTIFF’S COMPLAINT**

22 In his complaint plaintiff has identified Dr. Hamkar, Chief Medical Officer Sayre, Chief
23 Executive Officer McLean, and the California Correctional Health Care Services as the
24 defendants. Therein plaintiff alleges that he suffers from chronic neck and shoulder pain as a
25 result of an arthritic condition. Plaintiff further alleges that prison officials have denied him
26 adequate pain relief. Plaintiff claims that his arthritic condition is complicated by his Hepatitis C
27 condition and that the only adequate pain relief being made available to him causes increased
28 destruction of his liver. In this regard, plaintiff maintains that he is forced to choose between pain
relief and liver damage. In terms of relief, plaintiff requests damages and injunctive relief.
(Compl. at 2-11)

1 **DISCUSSION**

2 The allegations of plaintiff's complaint are so vague and conclusory that the court is
3 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
4 complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2).
5 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to
6 the defendants and must allege facts that support the elements of the claim plainly and succinctly.
7 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege
8 with at least some degree of particularity overt acts which defendants engaged in that support his
9 claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P.
10 8(a)(2), the complaint must be dismissed. However, the court will grant plaintiff leave to file an
11 amended complaint.

12 If plaintiff chooses to file an amended complaint, he must allege facts demonstrating how
13 the conditions complained of resulted in a deprivation of plaintiff's federal constitutional or
14 statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). In addition, plaintiff must
15 allege in specific terms how each named defendant was involved in the deprivation of plaintiff's
16 rights. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
17 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.
18 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740,
19 743 (9th Cir. 1978). Vague and conclusory allegations of official participation in civil rights
20 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

21 Plaintiff's complaint suffers from a number of deficiencies. First, the court observes that
22 plaintiff has named a number of supervisory officials as the defendants in this action. However,
23 plaintiff has not alleged what specific acts each of these defendants engaged in to violate his
24 constitutional rights. As noted above, supervisory personnel are generally not liable under § 1983
25 for the actions of their employees under a theory of respondeat superior and, therefore, when a
26 named defendant holds a supervisory position, the causal link between him and the claimed
27 constitutional violation must be specifically alleged. See Starr v. Baca, 652 F.3d 1202, 1207 (9th
28 Cir. 2011) (supervisory defendant may be held liable under § 1983 only "if there exists either (1)

1 his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal
2 connection between the supervisor's wrongful conduct and the constitutional violation.””) (quoting Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)).

4 Moreover, insofar as plaintiff wishes to present a claim that he has received
5 constitutionally inadequate medical care, he is advised that he will need to allege in specific terms
6 how any named defendants were “deliberately indifferent” to his serious medical needs in either
7 denying or providing inadequate medical care to him. See Estelle v. Gamble, 429 U.S. 97, 106
8 (1976) (inadequate medical care did not constitute cruel and unusual punishment cognizable
9 under § 1983 unless the mistreatment rose to the level of “deliberate indifference to serious
10 medical needs.”). Deliberate indifference is “a state of mind more blameworthy than negligence”
11 and “requires ‘more than ordinary lack of due care for the prisoner’s interests or safety.’” Farmer
12 v. Brennan, 511 U.S. 825, 835 (1994). Before it can be said that a prisoner’s civil rights have
13 been abridged, “the indifference to his medical needs must be substantial. Mere ‘indifference,’
14 ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.” Broughton v. Cutter
15 Lab., 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06). Likewise, a mere
16 disagreement between plaintiff and defendants as to how defendants provided him with medical
17 care fails to state a cognizable § 1983 claim. See Toguchi v. Soon Hwang Chung, 391 F.3d 1051,
18 1058 (9th Cir. 2004); Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996).

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

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1 **CONCLUSION**

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Plaintiff’s motion to proceed in forma pauperis (Doc. No. 2) is granted.

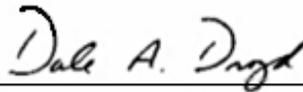
4 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
5 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
6 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
7 Director of the California Department of Corrections and Rehabilitation filed concurrently
8 herewith.

9 3. Plaintiff’s complaint is dismissed.

10 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
11 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
12 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
13 assigned to this case and must be labeled “Amended Complaint”; failure to file an amended
14 complaint in accordance with this order will result in a recommendation that this action be
15 dismissed without prejudice.

16 5. The Clerk of the Court is directed to send plaintiff the court’s form for filing a civil
17 rights action.

18 Dated: March 6, 2014

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21 DALE A. DROZD
22 UNITED STATES MAGISTRATE JUDGE

21 DAD:9
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