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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

QUINTERRIOUS CLARK,
Plaintiff,
v.
M. HERRERA et al.,
Defendants.

No. 2:13-cv-1885 JAM 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 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). 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 the present case, plaintiff has identified as defendants Lieutenant Hilliard and
23 Correctional Officers Herrera, Zavalas, Ellis, Weber, Kaiser, Scopello, and Purcell. All of the
24 named defendants appear to be employed at Mule Creek State Prison. According to the
25 complaint, defendant Herrera has repeatedly come to plaintiff’s cell and called him a “weirdo,
26 creep, and a little molester.” Plaintiff alleges that this verbal harassment has caused him distress
27 and has humiliated him in front of his fellow inmates because they assume he is “of this nature,”
28 which according to plaintiff is not true. Plaintiff also alleges that defendants Zavalas and Ellis
have thrown away his dinner tray and skipped his cell when inquiring which inmates want to
shower. (Compl. at 5 & Attachs.)

1 In addition to his complaint, plaintiff has filed two supplemental complaints with the
2 court. In the first supplemental complaint, plaintiff alleges that defendant Kaiser and defendant
3 Richardson have conducted cell searches of his cell and left his cell in disarray. According to
4 plaintiff, they have also confiscated and thrown away some of his property. In his second
5 supplemental complaint, plaintiff alleges that defendant Vanni has called him a rapist and
6 allegedly slandered him in front of other inmates. (Pl.'s First and Sec. Supp. Compls.)

7 **DISCUSSION**

8 The allegations in plaintiff's complaint are so vague and conclusory that the court is
9 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
10 complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2).
11 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to
12 the defendants and must allege facts that support the elements of the claim plainly and succinctly.
13 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege
14 with at least some degree of particularity overt acts which defendants engaged in that support his
15 claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P.
16 8(a)(2), the court will dismiss his complaint. The court will, however, grant him leave to file an
17 amended complaint.

18 In any amended complaint plaintiff elects to file, he must identify each defendant by name
19 and state therein all of the claims that he seeks to bring in this action. The court will not allow the
20 piecemeal filing of supplemental complaints. See Local Rule 15-220. Moreover, if plaintiff
21 chooses to file an amended complaint, he must allege in specific terms how each named
22 defendant was involved in the deprivation of plaintiff's rights. There can be no liability under 42
23 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions
24 and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d
25 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and
26 conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v.
27 Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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1 In any amended complaint plaintiff elects to file, he must clarify what constitutional right
2 he believes each defendant has violated and support each claim with factual allegations about
3 each defendant's actions. Plaintiff's original complaint primarily focuses on the defendants
4 harassing him by calling him names and throwing away his meals or skipping over his cell during
5 shower time. First, plaintiff is advised that slander is not a cognizable claim under § 1983. See
6 Hollister v. Tuttle, 210 F.3d 1033, 1036 (9th Cir. 2000) ("There is no civil rights action for
7 slander."). Similarly, verbal harassment or abuse alone do not violate the Constitution and thus
8 does not give rise to a cognizable claim under § 1983. Austin v. Terhune, 367 F.3d 1167, 1171-
9 72 (9th Cir. 2004); Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987) (vulgar language
10 and verbal harassment do not state a constitutional deprivation under § 1983). Plaintiff is further
11 advised that the denial of meals or shower privileges on occasion does not give rise to a
12 constitutional claim for cruel and unusual punishment because the routine discomfort inherent in
13 the prison setting is inadequate to satisfy the objective prong of an Eighth Amendment inquiry.
14 Only those deprivations denying "the minimal civilized measure of life's necessities" are
15 sufficiently grave to form the basis of an Eighth Amendment violation." Rhodes v. Chapman,
16 452 U.S. 337, 347 (1981).

17 Finally, the court notes that insofar as plaintiff wishes to proceed on a claim for loss of
18 property, he is advised that the United States Supreme Court has held that "an unauthorized
19 intentional deprivation of property by a state employee does not constitute a violation of the
20 procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful
21 postdeprivation remedy for the loss is available." Hudson v. Palmer, 468 U.S. 517, 533 (1984).
22 Thus, where the state provides a meaningful postdeprivation remedy, only authorized, intentional
23 deprivations constitute actionable violations of the Due Process Clause. An authorized
24 deprivation is one carried out pursuant to established state procedures, regulations, or statutes.
25 Piatt v. McDougall, 773 F.2d 1032, 1036 (9th Cir. 1985); see also Knudson v. City of Ellensburg,
26 832 F.2d 1142, 1149 (9th Cir. 1987). In his first supplemental complaint, plaintiff has not alleged
27 any facts suggesting that the taking of his property was authorized. The California Legislature
28 has provided a remedy for tort claims against public officials in California Government Code, §§

1 900, et seq. If plaintiff has not attempted to seek redress in the state system, he will not be able to
2 sue in federal court on the claim that the state deprived him of property without due process of the
3 law.

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

11 CONCLUSION

12 Accordingly, IT IS HEREBY ORDERED that:

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

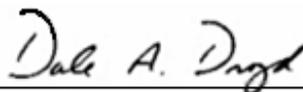
14 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. The fee
15 shall be collected and paid in accordance with this court's order to the Director of the California
16 Department of Corrections and Rehabilitation filed concurrently herewith.

17 3. Plaintiff's complaint and supplemental complaints (Doc. Nos. 1, 5 & 8) are dismissed.

18 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
19 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
20 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
21 assigned to this case and must be labeled "Amended Complaint"; failure to file an amended
22 complaint in accordance with this order will result in a recommendation that this action be
23 dismissed without prejudice.

24 5. The Clerk of the Court is directed to send plaintiff the court's form for filing a civil
25 rights action.

26 Dated: August 5, 2014

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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