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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL GUTIERREZ,
Plaintiff,
v.
R. BARNES, et al.,
Defendants.

No. 2: 15-cv-0547 MCE KJN P

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 by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff 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 to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account.

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

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

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
11 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
15 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
16 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
17 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
18 1227.

19 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
20 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
21 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
22 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
23 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
24 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
25 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.
26 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the
27 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v.
28 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal

1 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as
2 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
3 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
4 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

5 Named as defendants are Warden Barnes and Medical Staff at High Desert State Prison
6 (“HDSP”). (ECF No. 6 at 2.) Plaintiff alleges that he is being denied adequate pain medication.
7 (Id. at 3.) Plaintiff alleges that he is in severe pain without this medication. (Id.) Plaintiff seeks
8 injunctive and monetary relief. (Id.)

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

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

15 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
16 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
17 Monell v. Department of Social Servs., 436 U.S. 658 (1978) (“Congress did not intend § 1983
18 liability to attach where . . . causation [is] absent.”); Rizzo v. Goode, 423 U.S. 362 (1976) (no
19 affirmative link between the incidents of police misconduct and the adoption of any plan or policy
20 demonstrating their authorization or approval of such misconduct). “A person ‘subjects’ another
21 to the deprivation of a constitutional right, within the meaning of § 1983, if he does an
22 affirmative act, participates in another’s affirmative acts or omits to perform an act which he is
23 legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy,
24 588 F.2d 740, 743 (9th Cir. 1978).

25 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of
26 their employees under a theory of respondeat superior and, therefore, when a named defendant
27 holds a supervisory position, the causal link between him and the claimed constitutional
28 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
(no liability where there is no allegation of personal participation); Mosher v. Saalfeld, 589 F.2d
438, 441 (9th Cir. 1978) (no liability where there is no evidence of personal participation), cert.

1 denied, 442 U.S. 941 (1979). Vague and conclusory allegations concerning the involvement of
2 official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673
3 F.2d 266, 268 (9th Cir. 1982) (complaint devoid of specific factual allegations of personal
4 participation is insufficient).

5 Plaintiff's complaint contains no allegations linking defendant Barnes to the alleged
6 deprivation. Because defendant Barnes is not linked to plaintiff's claims, defendant Barnes is
7 dismissed.

8 Plaintiff's complaint names no other defendants. Although plaintiff lists "medical staff at
9 HDSP" as a defendant, the HDSP medical staff does not qualify as a defendant. Plaintiff must
10 name as defendants those individuals responsible for his alleged failure to receive adequate pain
11 medication.

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

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

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1 On February 18, 2015, plaintiff filed a motion to stay this action for 60 days while he
2 exhausts administrative remedies. (ECF No. 5.) Plaintiff alleges that prison officials have
3 delayed responding to his administrative grievance. Attached to plaintiff's motion is a
4 memorandum dated January 30, 2015 notifying plaintiff of a delay in the processing of his appeal
5 due to "unavailability of the appellant, staff or inmate witnesses." (Id. at 3.) The response states
6 that a response to plaintiff's appeal is expected by March 13, 2015. (Id.) By the time plaintiff
7 prepares his amended complaint, if he chooses to file one, 60 days will have passed from
8 February 18, 2015. Accordingly, plaintiff's motion to stay is denied.

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

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

11 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
12 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
13 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
14 Director of the California Department of Corrections and Rehabilitation filed concurrently
15 herewith.

16 3. Plaintiff's complaint is dismissed.

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

19 a. The completed Notice of Amendment; and

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

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

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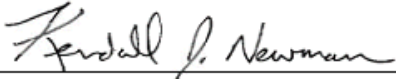
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5. Plaintiff's motion to stay (ECF No. 5) is denied.

Dated: April 3, 2015


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
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MIGUEL GUTIERREZ,
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Defendants.

No. 2: 15-cv-0547 MCE KJN P

NOTICE OF AMENDMENT

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

DATED: _____ Amended Complaint

Plaintiff