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

JAMES EDWARD BOWELL,)	No. C 08-04843 JW (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL WITH
)	LEAVE TO AMEND
vs.)	
)	
CALIFORNIA DEPT. OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	

Plaintiff, a prisoner at the High Desert State Prison in Susanville, California, has filed a pro se civil rights action under 42 U.S.C. § 1983 alleging claims against Salinas Valley Sate Prison (“SVSP”) officials. Plaintiff’s motion for leave to proceed in forma pauperis, (Docket No. 2), will be granted in a separate order. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a).

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is

1 frivolous, malicious, or fails to state a claim upon which relief may be granted,” or
2 “seeks monetary relief from a defendant who is immune from such relief.” Id. §
3 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v.
4 Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

5 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
6 elements: (1) that a right secured by the Constitution or laws of the United States
7 was violated, and (2) that the alleged violation was committed by a person acting
8 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

9 B. Legal Claims

10 Plaintiff alleges that on January 16, 2007 and March 14, 2007, SVSP prison
11 officials subjected plaintiff to the following: 1) excessive force; 2) attempted
12 murder; and 3) cruel and unusual punishment. Liberally construed, plaintiff’s claims
13 are cognizable under § 1983, as violations of his rights under the Eighth
14 Amendment. See Whitley v. Albers, 475 U.S. 312, 319 (1986); Farmer v. Brennan,
15 511 U.S. 825, 832 (1994); Jeffers v. Gomez, 267 F.3d 895, 918 (9th Cir. 2001).

16 C. Defendant N. Grannis

17 Plaintiff has named N. Grannis, Chief Inmate Appeals Branch at the
18 California Department of Corrections, as a defendant, alleging that there is a “causal
19 connection” between Grannis and Warden Mike Evans, who is “implicated in
20 supervisory liability.” (Compl. 4.) This is the only statement he makes with respect
21 to defendant Grannis.

22 Liability may be imposed on an individual defendant under § 1983 if the
23 plaintiff can show that the defendant proximately caused the deprivation of a
24 federally protected right. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988);
25 Harris v. City of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives
26 another of a constitutional right within the meaning of § 1983 if he does an
27 affirmative act, participates in another’s affirmative act or omits to perform an act
28 which he is legally required to do, that causes the deprivation of which the plaintiff

1 complains. See Leer, 844 F.2d at 633; Robins v. Meecham, 60 F.3d 1436, 1442 (9th
2 Cir. 1995). Plaintiff must set forth specific facts as to defendant Grannis' conduct
3 that proximately caused a violation of his federally protected rights. See Leer, 844
4 F.2d at 634. Plaintiff has not done so, having made no factual allegations as to
5 defendant Grannis' conduct which proximately caused him injury.

6 With respect to supervisor liability, a supervisor may be liable under § 1983
7 upon a showing of personal involvement in the constitutional deprivation or a
8 sufficient causal connection between the supervisor's wrongful conduct and the
9 constitutional violation. Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th
10 Cir. 1991) (en banc) (citation omitted). A supervisor therefore generally "is only
11 liable for constitutional violations of his subordinates if the supervisor participated
12 in or directed the violations, or knew of the violations and failed to act to prevent
13 them." Taylor, 880 F.2d at 1045. A supervisor may be liable for implementing "a
14 policy so deficient that the policy itself is a repudiation of constitutional rights and is
15 the moving force of the constitutional violation." Redman, 942 F. 2d at 1446; see
16 Jeffers v. Gomez, 267 F.3d 895, 917 (9th Cir. 2001). Plaintiff's claim against
17 defendant Grannis is DISMISSED with leave to amend to allege facts showing the
18 defendant Grannis has supervisory authority over the SVSP officials involved in the
19 alleged incident and that his conduct was constitutionally deficient in accordance
20 with the above.

22 CONCLUSION

23 For the foregoing reasons, the Court orders as follows:

24 1. Plaintiff's claims against defendant Grannis are hereby DISMISSED with
25 leave to amend, as indicated above. Within **thirty (30) days** of the date this order is
26 filed, plaintiff shall file an amended complaint. The amended complaint must
27 include the caption and civil case number used in this order and the words
28 AMENDED COMPLAINT on the first page and write in the case number for this


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action, Case No. C 08-04843 JW (PR). Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.), cert. denied, 113 S. Ct. 321 (1992). Plaintiff may not incorporate material from the original complaint by reference.

Alternatively, plaintiff may move for the Court to strike the claims against defendant Grannis from the original complaint and proceed only on the Eighth Amendment claims against SVSP officials.

2. It is plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed “Notice of Change of Address.” He must comply with the Court’s orders in a timely fashion or ask for an extension of time to do so. Failure to comply may result in the dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

DATED: January 26, 2009



JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JAMES EDWARD BOWELL,
Plaintiff,

Case Number: CV08-04843 JW

CERTIFICATE OF SERVICE

v.

CALIFORNIA DEPT. OF CORRECTIONS,
et al.,

Defendants.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 2/12/2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Edward Bowell H-04180
High Desert State Prison
P.O. Box 3030
Susanville, Ca 96127

Dated: 2/12/2009

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk