

MAR 04 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TOMMY PHILLIPS,

Plaintiff - Appellant,

v.

ROBERT AYERS, Jr.; CALVIN  
CAMPBELL III; ADAM GOREY;  
WAYNE REAUME; JAVIER  
ESPINOZA; DAVID VECCHETTI; JOSE  
ARROYO; ANDRE SKIDMORE;  
MELISSA GALINDO; RUDY  
ESPARZA; ANTHONY YSLAS,

Defendants - Appellees.

No. 07-55929

D.C. No. CV-07-02897-AHS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Alicemarie H. Stotler, District Judge, Presiding

Submitted February 18, 2009\*\*

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Tommy Phillips appeals pro se from the district court's order denying his application to proceed *in forma pauperis* in his 42 U.S.C. § 1983 action alleging that prison officials violated his civil rights by preventing him from practicing his religion, using excessive force against him, keeping him illegally in administrative segregation, and causing him to lose his prison job. We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion the denial of leave to file a complaint *in forma pauperis*, *Tripati v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987), and we review de novo the determination that a complaint lacks arguable substance in law or fact, *id.* We vacate and remand.

The district court abused its discretion in denying Phillips leave to file his complaint *in forma pauperis* on the basis that Phillips alleged only supervisor liability as to four of the defendants. *See Hooker v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (order) (holding that if at least one claim is non-frivolous, leave to proceed *in forma pauperis* on appeal must be granted for the case as a whole). Phillips explicitly alleged individual liability for his excessive force claim as to the seven defendants whom the district court did not identify. Moreover, as to two of the supervisor defendants whom the district court identified Phillips alleged direct personal involvement and not merely supervisory responsibility: Phillips alleged on page 4 of his supporting facts that defendant Wayne Reaume

personally participated in the attack upon Phillips and other inmates, and on page 7, Phillips alleged that defendant Calvin Campbell III personally kept Phillips illegally confined in administrative segregation by fabricating false misconduct charges against him.

We remand for the district court to determine in the first instance whether Phillips's finances merit *in forma pauperis* status and, if they do, to allow Phillips to proceed with his action *in forma pauperis*.

No costs awarded on appeal.

**VACATED and REMANDED.**