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

GABRIEL ANTONIO EVANS

Plaintiff,

No. CIV S-09-420 KJM P

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

ORDER

Plaintiff is a former state prisoner proceeding pro se. Plaintiff has filed a complaint concerning his previous incarceration and seeks relief pursuant to 42 U.S.C. § 1983. Plaintiff has also requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised

1 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may
2 be granted, or that seek monetary relief from a defendant who is immune from such relief. 28
3 U.S.C. § 1915A(b)(1),(2).

4 A claim is legally frivolous when it lacks an arguable basis either in law or in
5 fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-
6 28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
7 indisputably meritless legal theory or where the factual contentions are clearly baseless.
8 Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however
9 inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d
10 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

11 A complaint, or portion thereof, should only be dismissed for failure to state a
12 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
13 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
14 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer
15 v. Roosevelt Lake Log Owners Ass’n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
16 complaint under this standard, the court must accept as true the allegations of the complaint in
17 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the
18 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor,
19 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

20 The court finds the allegations in plaintiff’s complaint so vague that it is unable to
21 determine whether the current action is frivolous or fails to state a claim for relief. The court has
22 determined that the complaint does not contain a short and plain statement as required by Fed. R.
23 Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must
24 give fair notice and state the elements of the claim plainly and succinctly. Jones v. Community
25 Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some
26 degree of particularity overt acts which defendants engaged in that support plaintiff’s claim. Id.

1 Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the
2 complaint must be dismissed. The court will, however, grant leave to file an amended
3 complaint.

4 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
5 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
6 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
7 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
8 there is some affirmative link or connection between a defendant's actions and the claimed
9 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
10 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
11 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
12 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

13 If the plaintiff amends his complaint to state a claim that prison officials failed to
14 protect him, plaintiff must allege facts sufficient to show that certain defendants were
15 "deliberately indifferent" – that is, they were aware of but nevertheless consciously disregarded
16 an excessive risk to his health or safety. Farmer v. Brennan, 511 U.S. 825, 834 (1994). If the
17 official is not alleged to have actual knowledge of a serious risk of harm, but is alleged to be
18 aware of facts from which the inference could be drawn that a substantial risk of serious harm
19 exists, the plaintiff must further allege that the official "also dr[ew] the inference." Id. at 837.
20 The amended pleading must be specific about the nature of the threat to the inmate's health or
21 safety. See id.

22 If the plaintiff amends his complaint to challenge the constitutionality of a
23 housing assignment, including placement in administrative segregation, the plaintiff must be
24 specific in his pleading about how the housing assignment violated his right to due process. See
25 Toussaint v. McCarthy, 801 F.2d 1080, 1100 (9th Cir.1986). He must allege that a specific
26 defendant who ordered the assignment failed to hold a hearing within a reasonable time after the

1 assignment, denied the plaintiff notice of the reason for the assignment or denied the plaintiff the
2 opportunity to present his views. See Hewitt v. Helms, 459 U.S. 460, 476 (1983); Toussaint,
3 801 F.2d at 1100.

4 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
5 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
6 amended complaint be complete in itself without reference to any prior pleading. This is
7 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
8 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
9 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
10 original complaint, each claim and the involvement of each defendant must be sufficiently
11 alleged.

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

13 1. Plaintiff's request for leave to proceed in forma pauperis is granted;
14 2. Plaintiff's complaint is dismissed; and
15 3. Plaintiff is granted thirty days from the date of service of this order to file an
16 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
17 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
18 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file
19 an original and two copies of the amended complaint; failure to file an amended complaint in
20 accordance with this order will result in a recommendation that this action be dismissed.

21 DATED: July 21, 2009.

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23 
24 U.S. MAGISTRATE JUDGE

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