

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

FALVEY INGRAM, JR.,

Plaintiff,

No. CIV S-10-2165 KJM P

vs.

HIGH DESERT STATE PRISON,

Defendant.

ORDER

_____ /

Plaintiff is a former 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.

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 claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may

////

1 be granted, or that seek monetary relief from a defendant who is immune from such relief. 28
2 U.S.C. § 1915A(b)(1),(2).

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

10 In order to avoid dismissal for failure to state a claim a complaint must contain
11 more than “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements
12 of a cause of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). In other
13 words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
14 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a
15 claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570.
16 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
17 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129
18 S. Ct. at 1949. When considering whether a complaint states a claim upon which relief can be
19 granted, the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200
20 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
21 Rhodes, 416 U.S. 232, 236 (1974).

22 The court finds the allegations in plaintiff’s complaint too vague and conclusory
23 to state a claim upon which relief can be granted. Although the Federal Rules of Civil Procedure
24 adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the
25 claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir.
26 1984). Plaintiff must allege with at least some degree of particularity overt acts which

1 defendants engaged in that support plaintiff's claim. Id. Plaintiff's complaint must be dismissed.
2 The court will, however, grant leave to file an amended complaint, if plaintiff is able to do so
3 while complying with Federal Rule of Civil Procedure 11.

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 Plaintiff appears to allege he was forced to use a defective wheelchair. Plaintiff
14 is informed that the Eighth Amendment's prohibition of cruel and unusual punishment extends to
15 medical care of prison inmates. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). In order to state
16 a section 1983 claim for violation of the Eighth Amendment based on inadequate medical care, a
17 prison inmate must allege "acts or omissions sufficiently harmful to evidence deliberate
18 indifference to serious medical needs." Id. at 106. Also, the Eighth Amendment's prohibition
19 on cruel and unusual punishment imposes on prison officials, among other things, a duty to "take
20 reasonable measures to guarantee the safety of the inmates." Farmer v. Brennan, 511 U.S. 825,
21 832 (1991) (quoting Hudson v. Palmer, 468 U.S. 517, 526-27 (1984)). An inmate's Eighth
22 Amendment rights are violated by a prison official if that official exposes an inmate to a
23 "substantial risk of serious harm," while displaying "deliberate indifference" to that risk. Id. at
24 834.

25 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
26 order to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended

1 complaint be complete in itself without reference to any prior pleading. This is because, as a
2 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
3 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
4 longer serves any function in the case. Therefore, in an amended complaint, as in an original
5 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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

7 1. Plaintiff's request for leave to proceed in forma pauperis (docket entry # 6) is
8 granted.

9 2. Plaintiff's complaint is dismissed.

10 3. Plaintiff is granted thirty days from the date of service of this order to file an
11 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
12 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
13 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must file
14 an original and two copies of the amended complaint; failure to file an amended complaint in
15 accordance with this order will result in a recommendation that this action be dismissed.

16 DATED: October 12, 2010.

17 
18 U.S. MAGISTRATE JUDGE

19 1
20 ingr2165(9.10.10)