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

PAUL DEAN ROBERTS,

Plaintiff,

No. CIV S-12-0247 GGH P

vs.

CALIFORNIA DEPARTMENT  
OF CORRECTIONS, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceedings pro se. This action was removed by defendants from state court as plaintiff seeks relief pursuant to Title II of the Americans with Disabilities Act (ADA).

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

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

8 A complaint must contain more than a “formulaic recitation of the elements of a  
9 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the  
10 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).  
11 “The pleading must contain something more...than...a statement of facts that merely creates a  
12 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal  
13 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient  
14 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft  
15 v. Iqbal, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 570, 127  
16 S.Ct. 1955). “A claim has facial plausibility when the plaintiff pleads factual content that allows  
17 the court to draw the reasonable inference that the defendant is liable for the misconduct  
18 alleged.” Id.

19 In reviewing a complaint under this standard, the court must accept as true the  
20 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
21 738, 740, 96 S.Ct. 1848 (1976), construe the pleading in the light most favorable to the plaintiff,  
22 and resolve all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421, 89 S.Ct.  
23 1843 (1969).

24 Plaintiff states that he was confined to a wheelchair and because of this disability  
25 was denied certain freedoms, property and programs that were provided to other inmates.  
26 However, the complaint does not provide details concerning the denial of programs and property

1 and how it was due to plaintiff's disability. Based on plaintiff's exhibits it appears that for  
2 approximately three and a half weeks, he was moved from High Desert State Prison to CTC,  
3 because at that time he required a wheelchair accessible cell and none were available at High  
4 Desert. Plaintiff was then returned to High Desert when his health improved. It appears plaintiff  
5 did not receive his property at CTC because he was there less than a month, not due to his  
6 disability status. It appears plaintiff may have been denied yard and canteen services, but it is not  
7 clear how the denial was related to his disability. Therefore, this complaint is dismissed, but  
8 plaintiff may file an amended complaint within 28 days to describe in more detail the services he  
9 was denied and how it was related to his disability.

10 Title II of the ADA "prohibit[s] discrimination on the basis of disability." Lovell  
11 v. Chandler, 303 F.3d 1039, 1052 (9th Cir. 2002). Title II provides that "no qualified individual  
12 with a disability shall, by reason of such disability, be excluded from participation in or be denied  
13 the benefits of the services, programs, or activities of a public entity, or be subject to  
14 discrimination by such entity." 42 U.S.C. § 12132. Title II of the ADA applies to inmates within  
15 state prisons. Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S. 206, 118 S.Ct. 1952, 1955,  
16 141 L.Ed.2d 215 (1998); see also Armstrong v. Wilson, 124 F.3d 1019, 1023 (9th Cir.1997);  
17 Duffy v. Riveland, 98 F.3d 447, 453-56 (9th Cir. 1996).

18 In order to state a claim that a public program or service violated Title II of the  
19 ADA, a plaintiff must show: (1) he is a "qualified individual with a disability"; (2) he was either  
20 excluded from participation in or denied the benefits of a public entity's services, programs, or  
21 activities, or was otherwise discriminated against by the public entity; and (3) such exclusion,  
22 denial of benefits, or discrimination was by reason of his disability. McGary v. City of Portland,  
23 386 F.3d 1259, 1265 (9th Cir. 2004).

24 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
25 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
26 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms

1 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless  
2 there is some affirmative link or connection between a defendant's actions and the claimed  
3 deprivation. Rizzo v. Goode, 423 U.S. 362, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d  
4 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,  
5 vague and conclusory allegations of official participation in civil rights violations are not  
6 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

15 In accordance with the above, IT IS HEREBY ORDERED that the complaint is  
16 dismissed for the reasons discussed above, with leave to file an amended complaint, within  
17 twenty-eight days from the date of service of this order. Failure to file an amended complaint  
18 will result in a recommendation that this action be dismissed.

19 DATED: February 7, 2012

20 /s/ Gregory G. Hollows  
21 UNITED STATES MAGISTRATE JUDGE

21 GGH: AB  
22 robe0247.b