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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JASON TURNER,  
Plaintiff,  
v.  
D. ARTIS, et al.,  
Defendants.

No. 2:13-cv-0944 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed June 13, 2013, plaintiff’s amended complaint was dismissed with leave to file a second amended complaint. Plaintiff has now filed a second amended complaint.

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).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an

1 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
2 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
3 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
4 Cir. 1989); Franklin, 745 F.2d at 1227.

5 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
6 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
7 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
8 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
9 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim  
10 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
11 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
12 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.  
13 at 1949. When considering whether a complaint states a claim upon which relief can be granted,  
14 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),  
15 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416  
16 U.S. 232, 236 (1974).

17 The court finds the allegations in plaintiff’s second amended complaint so vague and  
18 conclusory that it fails to state a claim upon which relief can be granted. Although the Federal  
19 Rules of Civil Procedure adopt a flexible pleading policy, a complaint must give fair notice and  
20 state the elements of the claim plainly and succinctly. Jones v. Community Redev. Agency, 733  
21 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity  
22 overt acts which defendants engaged in that support plaintiff’s claim. Id. Plaintiff’s second  
23 amended complaint must be dismissed. The court will, however, grant leave one final  
24 opportunity to amend.

25 If plaintiff chooses to file a third amended complaint, plaintiff must demonstrate how the  
26 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See  
27 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Plaintiff complains about denial of access to  
28 prison activities such as access to the outside exercise yard. However, he fails to allege facts

1 indicating denial of such access amounts to cruel and unusual punishment under the Eighth  
2 Amendment or a violation of any other federal law.

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

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

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

19 1. Plaintiff's second amended complaint is dismissed; and

20 2. Plaintiff is granted thirty days from the date of service of this order to file a third  
21 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
22 of Civil Procedure, and the Local Rules of Practice; the third amended complaint must bear the  
23 docket number assigned this case and must be labeled "Third Amended Complaint"; plaintiff  
24 must file an original and two copies of the third amended complaint; failure to file a third

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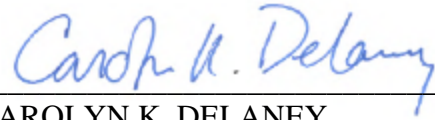
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1 amended complaint in accordance with this order will result in a recommendation that this action  
2 be dismissed.

3 Dated: August 12, 2013



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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