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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID SEGOVIA,  
Plaintiff,  
v.  
STATE OF CALIFORNIA,  
Defendant.

No. 2:14-cv-0715 DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se. He 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, plaintiff’s request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff’s trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month’s income credited to plaintiff’s prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
2 1915(b)(2).

3 The court is required to screen complaints brought by prisoners who seek relief against a  
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
10 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
11 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
12 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
13 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
14 Cir. 1989); Franklin, 745 F.2d at 1227.

15 In considering whether a complaint states a claim upon which relief can be granted, the  
16 court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007), and construe  
17 the complaint in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232,  
18 236 (1974). Pro se pleadings are held to a less stringent standard than those drafted by lawyers.  
19 See Haines v. Kerner, 404 U.S. 519, 520 (1972). Still, to survive dismissal for failure to state a  
20 claim, a pro se complaint must contain more than "naked assertions," "labels and conclusions" or  
21 "a formulaic recitation of the elements of a cause of action." Bell Atlantic Corp. v. Twombly,  
22 550 U.S. 544, 555-57 (2007). In other words, "[t]hreadbare recitals of the elements of a cause of  
23 action, supported by mere conclusory statements do not suffice." Ashcroft v. Iqbal, 556 U.S. 662,  
24 678 (2009). Furthermore, a claim upon which the court can grant relief must have facial  
25 plausibility. Twombly, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads  
26 factual content that allows the court to draw the reasonable inference that the defendant is liable  
27 for the misconduct alleged." Iqbal, 556 U.S. at 678. Attachments to a complaint are considered  
28 part of the complaint for purposes of a motion to dismiss for failure to state a claim. Hal Roach

1 Studios v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir.1990).

2 A complaint must give fair notice and state the elements of the claim plainly and  
3 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). A plaintiff  
4 must allege with at least some degree of particularity overt acts in which defendants engaged that  
5 support plaintiff's claim. Id. Therefore the complaint must allege in specific terms how each  
6 named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is  
7 some affirmative link or connection between an individual defendant's actions and the claimed  
8 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.  
9 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
10 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of  
11 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

12 Plaintiff's complaint variously identifies as defendants the following parties: the State of  
13 California, California State Prison-Sacramento, New Folsom Prison, board members of the State  
14 Medical Board, Dr. Nguyen, and Dr. Shafer. Plaintiff's statement of claim in his complaint  
15 provides: "Denied treatment for Hep-C & Lymphoma Cancer. Diagnoses March 23, 2013."  
16 (Compl. (Doc. No. 1) at 3.) The relief plaintiff seeks is: "grant me a civil suit." (Id.)

17 Beyond the admittedly serious allegation that plaintiff has been denied medical treatment,  
18 the complaint as pled fails to apprise the court or the defendants as to the facts underlying  
19 plaintiff's claims under the Civil Rights Act. There is nothing in the complaint to indicate what  
20 acts or omissions the named defendants allegedly committed that, if proved, would entitle the  
21 plaintiff to relief under 42 U.S.C. § 1983. It is also impossible to determine what relief plaintiff is  
22 seeking. For example, does he wish to enjoin the defendants from committing, or require them to  
23 perform, actions, such as providing him with specific medical treatment? And to what extent, if  
24 any, is he seeking monetary damages?

25 Because of these pleading deficiencies, plaintiff's complaint will be dismissed. However,  
26 the court will grant plaintiff the opportunity to file an amended complaint that states a claim  
27 under § 1983.

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1           If plaintiff is attempting to assert a claim for inadequate medical care, the Supreme Court  
2 has held that inadequate medical care did not constitute cruel and unusual punishment cognizable  
3 under § 1983 unless the mistreatment rose to the level of “deliberate indifference to serious  
4 medical needs.” Estelle v. Gamble, 429 U.S. 97, 106 (1976). In general, deliberate indifference  
5 may be shown when prison officials deny, delay, or intentionally interfere with medical  
6 treatment, or may be shown by the way in which prison officials provide medical care.  
7 Hutchinson v. United States, 838 F.2d 390, 393-94 (9th Cir. 1988).

8           In any amended complaint plaintiff elects to file, he will need to allege facts as to how  
9 each defendant’s actions rose to the level of “deliberate indifference.” Mere differences of  
10 opinion between a prisoner and prison medical staff or between medical professionals as to the  
11 proper course of treatment for a medical condition do not give rise to a § 1983 claim. See  
12 Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1058 (9th Cir. 2004); Jackson v. McIntosh, 90  
13 F.3d 330, 332 (9th Cir. 1996); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Franklin v.  
14 Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981). In addition, before it can be said that a prisoner’s  
15 civil rights have been abridged, “the indifference to his medical needs must be substantial. Mere  
16 ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.”  
17 Broughton v. Cutter Lab., 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06).  
18 See also Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990) (“In determining deliberate  
19 indifference, we scrutinize the particular facts and look for substantial indifference in the  
20 individual case, indicating more than mere negligence or isolated occurrences of neglect.”).

21           In closing, plaintiff is informed that the court cannot refer to a prior pleading in order to  
22 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended  
23 complaint be complete in itself without reference to any prior pleading. This is because, as a  
24 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
25 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
26 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
27 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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

2 1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
4 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §  
5 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
6 Director of the California Department of Corrections and Rehabilitation filed concurrently  
7 herewith.

8 3. Plaintiff's complaint is dismissed.

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

15 5. The Clerk of the Court is directed to immediately mail copies of this order and of  
16 plaintiff's complaint (ECF No. 1) to J. Clark Kelso, Receiver, California Correctional Health Care  
17 Services, P.O. Box 588500, Elk Grove, CA 95758. The Receiver, in turn, is requested to provide  
18 the undersigned with an informal status report as to plaintiff's current medical status and  
19 treatment, if any, for Hepatitis C and/or lymphatic cancer.

20 Dated: December 18, 2014

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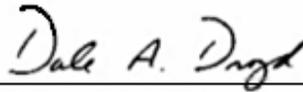
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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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