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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 PETER GRAVES,

12 Plaintiff,

13 v.

14 COSUMNES RIVER COLLEGE, ET AL.,

15 Defendants.
16

No. 2:14-cv-0765-JAM AC PS

ORDER

17 Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to
18 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by
19 Local Rule 72-302(c)(21).

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

23 A. Screening the Complaint

24 The federal in forma pauperis statute authorizes federal courts to dismiss a case if the
25 action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted,
26 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
27 § 1915(e)(2).

28 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.

1 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
2 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
3 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
4 490 U.S. at 327.

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

14 While plaintiff appears to accuse defendants of discriminating against him on account of
15 his unidentified ethnic background, the court finds the allegations in plaintiff's complaint so
16 vague and conclusory that it is unable to determine whether the current action is frivolous or fails
17 to state a claim for relief. The court has determined that the complaint does not contain a short
18 and plain statement as required by Federal Rule of Civil Procedure 8(a)(2). Although the Federal
19 Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of
20 the claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th
21 Cir. 1984). Plaintiff must allege with at least some degree of particularity overt acts which
22 defendants engaged in that support plaintiff's claim. Id. Because plaintiff has failed to comply
23 with the requirements of Federal Rule of Civil Procedure 8(a)(2), the complaint must be
24 dismissed. The court will, however, grant leave to file an amended complaint.

25 If plaintiff chooses to amend the complaint, plaintiff must set forth the jurisdictional
26 grounds upon which the court's jurisdiction depends. Fed. R. Civ. P. 8(a). Further, plaintiff must
27 demonstrate how the conduct complained of has resulted in a deprivation of plaintiff's federal
28 rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific

1 terms how each named defendant is involved. There can be no liability under § 1983 unless there
2 is some affirmative link between a defendant's actions and the claimed deprivation. Rizzo v.
3 Goode, 423 U.S. 362 (9176); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v.
4 Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

12 B. Miscellaneous Motions

13 In addition to his motion to proceed in forma pauperis, plaintiff has filed the following
14 four motions: (1) a March 26, 2014 motion for order to defendant to allow plaintiff's class
15 attendance, (2) an April 2, 2014 motion for the court to grant due process, (3) an April 3, 2014
16 second motion for the court to grant due process, and (4) an April 4, 2014 third motion for the
17 court to grant due process. In the March 26, 2014 motion, plaintiff seeks a court order granting
18 him an opportunity to enroll in a class that he contends he is not allowed to attend. The court
19 finds the three motions for due process (ECF Nos. 4-6) to be nonsensical, and will deny them
20 accordingly.

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

- 22 1. Plaintiff's application to proceed in forma pauperis is granted (ECF No. 2);
- 23 2. Plaintiff's March 26, 2014 motion for order to allow his class attendance (ECF No. 3)
24 is denied;
- 25 3. Plaintiff's April 2, 3, and 4, 2014 motions for the court to grant due process (ECF Nos.
26 4-6) are denied;
- 27 4. Plaintiff's complaint is dismissed; and
- 28 5. Plaintiff is granted thirty days from the date of service of this order to file an amended

1 complaint that complies with the requirements of the Federal Rules of Civil Procedure,
2 and the Local Rules of Practice; the amended complaint must bear the docket number
3 assigned this case and must be labeled "Amended Complaint"; plaintiff must file an
4 original and two copies of the amended complaint; failure to file an amended
5 complaint in accordance with this order will result in a recommendation that this
6 action be dismissed.

7 DATED: April 14, 2014

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9 ALLISON CLAIRE
10 UNITED STATES MAGISTRATE JUDGE
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