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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 LONNIE GLEN SCHMIDT,

12 Plaintiff,

13 v.

14 TAN THINH, et al.,

15 Defendants.  
16

No. 2:14-cv-2868 CKD P

ORDER

17 Plaintiff is a county jail inmate proceeding pro se. Plaintiff seeks relief pursuant to 42  
18 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. §  
19 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. §  
20 636(b)(1).

21 Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. §  
22 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

23 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§  
24 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the  
25 initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court.  
26 Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding  
27 month's income credited to plaintiff's prison trust account. These payments will be forwarded by  
28 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account

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

2 I. Screening Standard

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

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## 1 II. Analysis

2 Plaintiff claims that three employees of the Sacramento County District Attorney's office  
3 violated his civil rights by filing a felony complaint against him based on false representations.  
4 He seeks compensatory and punitive damages.

5 Plaintiff's claims are not cognizable, as prosecutors are absolutely immune from civil suits  
6 for damages under § 1983 which challenge activities related to the initiation and presentation of  
7 criminal prosecutions. Imbler v. Pachtman, 424 U.S. 409 (1976). Determining whether a  
8 prosecutor's actions are immunized requires a functional analysis. The classification of the  
9 challenged acts, not the motivation underlying them, determines whether absolute immunity  
10 applies. Ashelman v. Pope, 793 F.2d 1072 (9th Cir. 1986) (en banc). The prosecutor's quasi-  
11 judicial functions, rather than administrative or investigative functions, are absolutely immune.  
12 Thus, even charges of malicious prosecution, falsification of evidence, coercion of perjured  
13 testimony and concealment of exculpatory evidence will be dismissed on grounds of prosecutorial  
14 immunity. See Stevens v. Rifkin, 608 F. Supp. 710, 728 (N.D. Cal. 1984).

15 Because the PLRA requires dismissal of a complaint seeking monetary relief from a  
16 defendant who is immune from such relief, 28 U.S.C. § 1915A(2), this action must be dismissed.  
17 However, plaintiff will be accorded one opportunity to file an amended complaint to attempt to  
18 allege facts stating a cognizable claim.

## 19 III. Leave to Amend

20 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
21 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.  
22 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how  
23 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there  
24 is some affirmative link or connection between a defendant's actions and the claimed deprivation.  
25 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);  
26 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
27 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of  
28 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

9 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 5) is granted.

10 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees  
11 shall be collected and paid in accordance with this court's order to the Sheriff of Sacramento  
12 County filed concurrently herewith.

13 3. Plaintiff's complaint is dismissed.

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

20 Dated: March 4, 2015

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22 CAROLYN K. DELANEY  
23 UNITED STATES MAGISTRATE JUDGE  
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