

1 Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding
2 month's income credited to plaintiff's prison trust account. These payments will be forwarded by
3 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account
4 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

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

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

17 In order to avoid dismissal for failure to state a claim a complaint must contain more than
18 "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause
19 of action." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
20 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
21 statements do not suffice." Ashcroft v. Iqbal, 556 U.S. at 678 (2009). Furthermore, a claim upon
22 which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. "A claim has
23 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
24 reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at
25 678. When considering whether a complaint states a claim upon which relief can be granted, the
26 court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007), and
27 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
28 U.S. 232, 236 (1974).

1 The court finds the allegations in plaintiff's complaint so vague and conclusory that it fails
2 to state a claim upon which relief can be granted. Although the Federal Rules of Civil Procedure
3 adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the
4 claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir.
5 1984). Plaintiff must allege with at least some degree of particularity overt acts which defendants
6 engaged in that support plaintiff's claim. Id. Plaintiff's complaint must be dismissed. The court
7 will, however, grant leave to file an amended complaint.

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

17 It appears some of the issues raised in plaintiff's complaint concern reasons why she is
18 incarcerated. Plaintiff is informed that when a prisoner challenges the legality of custody and the
19 relief sought is earlier or immediate release, the sole federal remedy is a writ of habeas corpus.
20 Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Further, the court cannot grant federal habeas
21 relief until state court remedies have been exhausted with respect to the claim provided a basis for
22 relief. See Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086
23 (9th Cir. 1986). To the extent the claims raised in plaintiff's complaint imply the invalidity of her
24 incarceration, the claims are barred by Heck v. Humphrey, 512 U.S. 477, 487 (1994).

25 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
26 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
27 complaint be complete in itself without reference to any prior pleading. This is because, as a
28 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375

1 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
2 longer serves any function in the case. Therefore, in an amended complaint, as in an original
3 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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

5 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 8) is granted.

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

9 3. Plaintiff's complaint is dismissed.

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

16 Dated: April 8, 2015



17 CAROLYN K. DELANEY
18 UNITED STATES MAGISTRATE JUDGE

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