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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES LOPER,	No. 2:15-cv-1055 CKD P
Plaintiff,	
v.	<u>ORDER</u>
D. ENGLISH, et al.,	
Defendants.	

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and is proceeding in forma pauperis (ECF No. 14) pursuant to 28 U.S.C. § 1915.

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 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully

1 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
2 Cir. 1989); Franklin, 745 F.2d at 1227.

3 In order to avoid dismissal for failure to state a claim a complaint must contain more than
4 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
5 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
6 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
7 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
8 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
9 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
10 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
11 at 678. When considering whether a complaint states a claim upon which relief can be granted,
12 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
13 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
14 U.S. 232, 236 (1974).

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

22 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
23 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.
24 Cassidy, 625 F.2d 227 (9th Cir. 1980). Plaintiff’s primary complaint is that he has been denied
25 adequate medical care. In order to state a claim for inadequate medical care under the Eighth
26 Amendment, plaintiff must point to facts indicating defendants have been at least deliberately
27 indifferent to a prisoner’s serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976).
28 In plaintiff’s amended complaint plaintiff must take care to allege in specific terms how each

1 named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is
2 some affirmative link or connection between a defendant's actions and the claimed deprivation.
3 Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official
4 participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266,
5 268 (9th Cir. 1982).

6 Plaintiff also asserts he has been denied the ability to send "legal mail." Plaintiff is
7 informed that to state a claim for denial of access to courts in violation of the First Amendment,
8 plaintiff must identify the precise way in which he was denied access to a court, how that resulted
9 in injury, and who denied him access. See Lewis v. Casey, 518 U.S. 343 (1996).

10 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
11 make plaintiff's 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 an amended complaint, the original pleading no
15 longer serves any function in the case. Therefore, in an amended complaint, as in an original
16 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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

18 1. Plaintiff's complaint (ECF No. 7) is dismissed.

19 2. Plaintiff is granted thirty days from the date of service of this order to file an amended
20 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
21 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
22 assigned this case and must be labeled "Amended Complaint"; failure to file an amended
23 complaint in accordance with this order will result in dismissal.

24 Dated: August 19, 2015

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE
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