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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 SAMUEL WINDHAM, JR.,

12 Plaintiff,

13 v.

14 CALIFORNIA MEDICAL FACILITY, et
15 al.,

16 Defendants.
17

No. 2:15-cv-1058 MCE CKD P

ORDER

18 Plaintiff is a state prisoner proceeding pro se. On May 13, 2015, this action was removed
19 to this court from the Superior Court of Solano County by defendants Sabin and Yun.

20 The court is required to screen complaints brought by prisoners where, as here, the
21 prisoner seeks relief against a governmental entity or officer or employee of a governmental
22 entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the
23 prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon
24 which relief may be granted, or that seek monetary relief from a defendant who is immune from
25 such relief. 28 U.S.C. § 1915A(b)(1),(2).

26 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
27 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
28 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an

1 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
2 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
3 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
4 Cir. 1989); Franklin, 745 F.2d at 1227.

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

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

24 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
25 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.
26 Cassidy, 625 F.2d 227 (9th Cir. 1980). Plaintiff complains about inadequate medical care.
27 Inadequate medical care may constitute a violation of the Eighth Amendment. Estelle v. Gamble,
28 429 U.S. 97, 104-05 (1976). In order to state a claim under the Eighth Amendment for

1 inadequate medical care, plaintiff must allege a defendant was deliberately indifferent to
2 plaintiff's serious medical needs. Id. Also, plaintiff's amended complaint must allege in specific
3 terms how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983
4 unless there is some affirmative link or connection between a defendant's actions and the claimed
5 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
6 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
7 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

16 1. Plaintiff's complaint is dismissed.

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

23 Dated: August 26, 2015

24 
25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE