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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM HACKNEY,  
Plaintiff,  
v.  
CALIFORNIA HEALTH CARE  
FACILITY et al.,  
Defendants.

No. 2:15-cv-2160 JAM CKD P (TEMP)

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s first amended complaint.

**SCREENING REQUIREMENT**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 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. See 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

1 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
3 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
4 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
5 Cir. 1989); Franklin, 745 F.2d at 1227.

6 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain  
7 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
8 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
9 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
10 However, in order to survive dismissal for failure to state a claim a complaint must contain more  
11 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
12 allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550  
13 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
14 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
15 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
16 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

17 The Civil Rights Act under which this action was filed provides as follows:

18 Every person who, under color of [state law] . . . subjects, or causes  
19 to be subjected, any citizen of the United States . . . to the  
20 deprivation of any rights, privileges, or immunities secured by the  
21 Constitution . . . shall be liable to the party injured in an action at  
22 law, suit in equity, or other proper proceeding for redress.

23 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
24 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
25 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
26 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
27 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
28 omits to perform an act which he is legally required to do that causes the deprivation of which  
complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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1 Rule of Civil Procedure 8(a)(2), the court must dismiss plaintiff's amended complaint. In the  
2 interest of justice, the court will grant plaintiff leave to file a final, second amended complaint.

3 If plaintiff chooses to pursue this action by filing a second amended complaint, he must  
4 allege facts therein demonstrating how the conditions complained of resulted in a deprivation of  
5 plaintiff's federal constitutional or statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir.  
6 1980). In addition, plaintiff must allege in specific terms how each named defendant was  
7 involved in the deprivation of plaintiff's rights. Rizzo v. Goode, 423 U.S. 362 (1976); May v.  
8 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
9 1978). Vague and conclusory allegations of official participation in civil rights violations are not  
10 sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

11 As this court previously advised plaintiff, to maintain an Eighth Amendment claim based  
12 on inadequate medical care, he must allege facts showing that defendants acted with deliberate  
13 indifference to serious medical needs. See Estelle v. Gamble, 429 U.S. 97 (1976). In this regard,  
14 plaintiff must allege how each defendant was involved in his medical care, explain why the care  
15 he received was inadequate, and clarify what injury he suffered as a result of the defendant's  
16 medical care. In the Ninth Circuit, a deliberate indifference claim has two components:

17 First, the plaintiff must show a "serious medical need" by  
18 demonstrating that "failure to treat a prisoner's condition could  
19 result in further significant injury or the 'unnecessary and wanton  
20 infliction of pain.'" Second, the plaintiff must show the  
21 defendant's response to the need was deliberately indifferent. This  
22 second prong – defendant's response to the need was deliberately  
23 indifferent – is satisfied by showing (a) a purposeful act or failure  
24 to respond to a prisoner's pain or possible medical need and (b)  
25 harm caused by the indifference. Indifference "may appear when  
26 prison officials deny, delay or intentionally interfere with medical  
27 treatment, or it may be shown by the way in which prison  
28 physicians provide medical care." (internal citations omitted)

24 Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006).

25 Plaintiff is cautioned that, in applying the deliberate indifference standard, the Ninth  
26 Circuit has held that before it can be said that a prisoner's civil rights have been abridged, "the  
27 indifference to his medical needs must be substantial. Mere 'indifference,' 'negligence,' or  
28 'medical malpractice' will not support this cause of action." Broughton v. Cutter Lab., 622 F.2d

1 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06). In addition, mere differences of  
2 opinion between a prisoner and prison medical staff as to the proper course of treatment for a  
3 medical condition do not give rise to a § 1983 claim. See Snow v. McDaniel, 681 F.3d 978, 988  
4 (9th Cir. 2012); Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1058 (9th Cir. 2004); Jackson v.  
5 McIntosh, 90 F.3d 330, 332 (9th Cir. 1996); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989);  
6 Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981).

7 Also, delays in providing medical care may manifest deliberate indifference. See Estelle,  
8 429 U.S. at 104-05. To establish a deliberate indifference claim arising from a delay in providing  
9 medical care, however, a plaintiff must allege facts showing that the delay was harmful. See  
10 Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994); Hunt v. Dental Dep't, 865 F.2d 198, 200  
11 (9th Cir. 1989); Shapley v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir.  
12 1985). In this regard, “[a] prisoner need not show his harm was substantial; however, such would  
13 provide additional support for the inmate’s claim that the defendant was deliberately indifferent to  
14 his needs.” Jett, 439 F.3d at 1096.

15 Finally, the undersigned observes that plaintiff has named Warden Duffy as a defendant in  
16 his amended complaint. As noted above, supervisory personnel are generally not liable under §  
17 1983 for the actions of their employees under a theory of respondeat superior. The Ninth Circuit  
18 has made clear that a supervisory defendant may be held liable under § 1983 only “‘if there exists  
19 either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient  
20 causal connection between the supervisor’s wrongful conduct and the constitutional violation.’”  
21 Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting Hansen v. Black, 885 F.2d 642, 646  
22 (9th Cir.1989)). If plaintiff wishes to proceed against Warden Duffy, he will need to allege facts  
23 in his second amended complaint clarifying the causal connection between the defendant and his  
24 alleged constitutional deprivations.

25 Plaintiff is reminded that the court cannot refer to prior pleadings in order to make his  
26 second amended complaint complete. Local Rule 220 requires that an amended complaint be  
27 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
28 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th

1 Cir. 1967). Once plaintiff files a second amended complaint, his prior pleading no longer serves  
2 any function in the case. Therefore, in a second amended complaint, as in an original complaint,  
3 each claim and the involvement of each defendant must be sufficiently alleged.

4 **CONCLUSION**

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's amended complaint (Doc. No. 17) is dismissed;
- 7 2. Plaintiff is granted thirty days from the date of service of this order to file a second  
8 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
9 of Civil Procedure, and the Local Rules of Practice; the second amended complaint must bear the  
10 docket number assigned to this case and must be labeled "Second Amended Complaint"; failure  
11 to file a second amended complaint in accordance with this order will result in a recommendation  
12 that this action be dismissed without prejudice; and
- 13 3. The Clerk of the Court is directed to send plaintiff the court's form for filing a civil  
14 rights action.

15 Dated: March 11, 2016

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18 CAROLYN K. DELANEY  
19 UNITED STATES MAGISTRATE JUDGE

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