

1 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
2 meritless legal theories or whose factual contentions are clearly baseless.” *Jackson v. Arizona*,
3 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), *superseded by statute*
4 *on other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *Neitzke*, 490
5 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,
6 has an arguable legal and factual basis. *Id.*

7 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
8 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
9 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.
10 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

11 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
12 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
13 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations
14 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
15 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)
16 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* 1216 (3d
17 ed. 2004)).

18 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
19 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
20 *Corp.*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content
21 that allows the court to draw the reasonable inference that the defendant is liable for the
22 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint
23 under this standard, the court must accept as true the allegations of the complaint in question,
24 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading
25 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, *Jenkins v.*
26 *McKeithen*, 395 U.S. 411, 421 (1969).

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1 designed to guide correctional officials in the administration of a prison” and are “not designed to
2 confer rights on inmates”); *Phillips v. Norris*, 320 F.3d 844, 847 (8th Cir. 2003) (“[T]here is no
3 federal constitutional liberty interest in having state officers follow state law or prison officials
4 follow prison regulations.”); *Hovater v. Robinson*, 1 F.3d 1063, 1068 n.4 (10th Cir. 1993) (“[A]
5 failure to adhere to administrative regulations does not equate to a constitutional violation.”).

6 Leave to Amend

7 The only remaining question is whether to grant plaintiff further leave to amend his
8 complaint. As noted *supra*, the current complaint represents plaintiff’s second attempt at stating a
9 potentially cognizable claim, and he appears no closer to doing so. Thus, this action should be
10 dismissed without leave to amend. See *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 809-810
11 (9th Cir. 1988) (“Repeated failure to cure deficiencies by amendments previously allowed is
12 another valid reason for a district court to deny a party leave to amend.”).

13 Conclusion

14 Based on the foregoing, IT IS HEREBY RECOMMENDED that plaintiff’s third amended
15 complaint (ECF No. 16) be dismissed without leave to amend and the Clerk be directed to close
16 the case.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, any party may file written
20 objections with the court and serve a copy on all parties. Such a document should be captioned
21 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
22 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
23 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

24 DATED: November 15, 2018.

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26 EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE
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