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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BOBBY C. WHITE,  
Plaintiff,  
v.  
K. O’CONNER, et al.,  
Defendants.

No. 2:16-cv-02675 MCE CKD P

ORDER

Plaintiff is a state prisoner proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and is proceeding in forma pauperis. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302. On April 18, 2017, plaintiff was granted an additional 60 days to file an amended complaint for the reasons described in this court’s December 9, 2016 screening order. ECF No. 11. Plaintiff filed what is captioned as an “amended complaint” along with a motion for a 45 day extension of time to exhaust administrative remedies on June 19, 2017. ECF Nos. 12, 13.

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).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon  
9 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in  
10 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467  
11 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt  
12 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under  
13 this standard, the court must accept as true the allegations of the complaint in question, Hospital  
14 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light  
15 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.  
16 McKeithen, 395 U.S. 411, 421 (1969).

17 The amended complaint fails to fulfill the requirements of Rule 8(a) of the Federal Rules  
18 of Civil Procedure because it does not contain "a short and plain statement of the claim for relief  
19 or the grounds for the court's jurisdiction. Plaintiff's amended complaint only discusses the  
20 availability or non-availability of administrative remedies for unspecified claims. ECF No. 12.  
21 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice  
22 and state the elements of the claim plainly and succinctly. Jones v. Cmty. Redev. Agency, 733  
23 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity  
24 overt acts which defendants engaged in that support plaintiff's claim. Id. Because plaintiff has  
25 failed to comply with the requirements of Fed. R. Civ. P. 8(a), the amended complaint must be  
26 dismissed. The court will, however, grant leave to file a second amended complaint.

27 Also pending before the court is plaintiff's motion for a 45 day extension of time to  
28 complete the exhaustion of administrative remedies. ECF No. 13. The court will construe

1 plaintiff's request as a motion for an extension of time to file a second amended complaint. So  
2 construed, the motion will be granted based on good cause shown.

3 IT IS HEREBY ORDERED that:

- 4 1. Plaintiff's amended complaint filed on June 19, 2017 is dismissed with leave to amend;
- 5 2. Plaintiff's motion for an extension of time is granted (ECF No. 13); and
- 6 3. Plaintiff is granted thirty days from the service date of this order in which to file a  
7 second amended complaint that complies with the requirements of the Civil Rights Act, the  
8 Federal Rules of Civil Procedure, and the Local Rules of Practice; the second amended complaint  
9 must bear the docket number assigned to this case and must be labeled "Second Amended  
10 Complaint"; plaintiff must file an original and two copies of the second amended complaint; and,  
11 the failure to file a second amended complaint in accordance with this order will result in a  
12 recommendation that this action be dismissed.

13 Dated: October 10, 2017



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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