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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL AARON WITKIN,  
Plaintiff,  
v.  
M. LEE, et al.,  
Defendants.

No. 2:17-cv-0232 JAM 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. Plaintiff’s amended complaint is now before the court for screening.

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

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

14 As in his original complaint, plaintiff seeks damages for not being provided adequate  
15 nutrition at California State Prison, Solano. However, plaintiff still fails to point to facts  
16 suggesting he suffered actionable injury as a result of any specific defendant's deliberate  
17 indifference to plaintiff's health. As plaintiff was informed when the court screened plaintiff's  
18 original complaint, plaintiff has a right under the Eighth Amendment not to be subjected to cruel  
19 and unusual punishment. In the nutrition context, cruel and unusual punishment has been found  
20 where prison officials fail to provide food that is adequate to maintain health. LeMaire v. Maass,  
21 12 F.3d 1444, 1456 (9th Cir. 1993). As with any Eighth Amendment claim for damages, plaintiff  
22 must allege that the defendant's level of intent in failing to provide constitutionally adequate food  
23 was at least deliberate indifference. See Farmer v. Brennan, 511 U.S. 825, 834 (1994).

24 For reasons stated above, plaintiff's amended complaint must be dismissed. The court  
25 will provide plaintiff one more opportunity to state a claim upon which he may proceed.

26 Plaintiff is reminded that in order to state a claim for damages, plaintiff must allege in his  
27 amended complaint how each named defendant is involved. There can be no liability under 42  
28 U.S.C. § 1983 unless there is some clear, affirmative link or connection between a defendant's

1 actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague  
2 and conclusory allegations of official participation in civil rights violations are not sufficient.  
3 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).


4 If plaintiff believes he is not being provided constitutionally adequate food right now, he  
5 might pursue a claim for injunctive relief, rather than a claim for damages based upon past  
6 wrongs. Such a claim could be maintained against the warden of his prison in his official  
7 capacity.

8 Plaintiff is again informed that the court cannot refer to a prior pleading in order to make  
9 plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be  
10 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
11 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th  
12 Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any  
13 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim  
14 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 amended complaint is dismissed; and
- 17 2. Plaintiff is granted thirty days from the date of service of this order to file a second  
18 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
19 of Civil Procedure, and the Local Rules of Practice; the second amended complaint must bear the  
20 docket number assigned this case and must be labeled "Second Amended Complaint"; failure to  
21 file a second amended complaint in accordance with this order will result in a recommendation  
22 that this action be dismissed.

23 Dated: October 20, 2017

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26 CAROLYN K. DELANEY  
27 UNITED STATES MAGISTRATE JUDGE

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