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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 pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. Plaintiff's second amended complaint is before the court for screening under 28 U.S.C. § 1915A(a). The court has conducted the required screening and finds that the second amended complaint states claims upon which plaintiff may proceed under the Eighth Amendment against defendants Alvarez, Dinh, Lee, Matteson, Maurino, Arnold and Neuschmid for failure to provide Constitutionally adequate nutrition. As for plaintiff's claim arising under California law, plaintiff has failed to plead compliance with the California Tort Claims Act, which he must do to proceed on any claim arising under California law against a state official. See Cal. Gov't Code §§ 905, 911.2(a), 945.4 & 950.2; Mangold v. California Pub. Utils. Comm'n, 67 F.3d 1470, 1477 (9th Cir.1995).

At this point, plaintiff has two options: 1) he may proceed on his Eighth Amendment claims; or 2) attempt to cure the deficiencies with respect to the claims arising under California

1 law in third amended complaint. If plaintiff elects to amend, plaintiff is informed that the third  
2 amended complaint cannot exceed 20 pages and cannot refer to a prior pleading in order to make  
3 the third amended complaint complete. Local Rule 220 requires that an amended complaint be  
4 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
5 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th  
6 Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any  
7 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim  
8 and the involvement of each defendant must be sufficiently alleged.

9 In accordance with the above, IT IS HEREBY ORDERED that within twenty-one days  
10 plaintiff shall complete and return the attached form notifying the court whether he wants to  
11 proceed on his Eighth Amendment claims against defendants Alvarez, Dinh, Lee, Matteson,  
12 Maurino, Arnold and Neuschmid, or whether he wishes to file a third amended complaint in an  
13 attempt to cure the deficiencies with respect to his claims arising under California law. Failure to  
14 complete and return the attached form will result in a recommendation that this action be  
15 dismissed.

16 Dated: September 18, 2018

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18 CAROLYN K. DELANEY  
19 UNITED STATES MAGISTRATE JUDGE

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Defendants.

No. 2:17-cv-0232 JAM CKD P

PLAINTIFF'S NOTICE OF  
HOW TO PROCEED

Check one:

\_\_\_\_\_ Plaintiff wants to proceed immediately on Eighth Amendment against defendants Alvarez, Dinh, Lee, Matteson, Maurino, Arnold and Neuschmid for failure to provide Constitutionally adequate nutrition.

\_\_\_\_\_ Plaintiff wants time to file a third amended complaint.

DATED:

\_\_\_\_\_  
Plaintiff