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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT ANTHONY CALLENDER,  
Plaintiff,  
v.  
DR. BECKEL, et al.,  
Defendants.

No. 2:17-cv-00274 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 first amended complaint is now before the court.

**I. Screening Standard**

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

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

## 15 **II. Analysis**

16 On February 16, 2017, the court dismissed plaintiff's original complaint with leave to  
17 amend because plaintiff failed to allege specific details "as to when or how" his constitutional  
18 rights were violated by prison psychologists and psychiatrists in the course of six years of  
19 Enhanced Outpatient Treatment. ECF No. 8 at 2. Instead of identifying the specific actions taken  
20 by each named defendant, plaintiff has expanded the scope of his first amended complaint by  
21 naming defendants at three different correctional institutions, including Atascadero State Hospital  
22 which is not even within the jurisdiction of this court. Plaintiff generally complains about the  
23 level of psychiatric care he has received for his mesophonia, or hypersensitivity to sounds,  
24 tinnitus, and depression. See ECF No. 13 at 8-35.

25 In order to state an Eighth Amendment claim for inadequate medical care, "a prisoner  
26 must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious  
27 medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). Plaintiff must plead sufficient facts  
28 to permit the court to infer that (1) plaintiff had a "serious medical need," and that (2) individual

1 defendants were “deliberately indifferent” to that need. Jett v. Penner, 439 F.3d 1091, 1096 (9th  
2 Cir.2006). A showing of merely inadvertent or even negligent medical care is not enough to  
3 establish a constitutional violation. Estelle, 429 U.S. at 105–06; Frost v. Agnos, 152 F.3d 1124,  
4 1130 (9th Cir.1998). A difference of opinion about the proper course of treatment is not  
5 deliberate indifference, nor does a dispute between a prisoner and prison officials over the  
6 necessity for or extent of medical treatment amount to a constitutional violation. See, e.g.,  
7 Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th  
8 Cir. 1989).

9 For these reasons, the court once again finds the allegations in plaintiff's first amended  
10 complaint to be too vague and conclusory to state a claim for relief. Furthermore, the court has  
11 determined that the first amended complaint does not contain a short and plain statement as  
12 required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy,  
13 a complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones  
14 v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least  
15 some degree of particularity overt acts which defendants engaged in that support plaintiff's claim.  
16 Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the  
17 first amended complaint must be dismissed. The court will, however, grant leave to file a second  
18 amended complaint.

### 19 **III. Leave to Amend**

20 If plaintiff chooses to amend the complaint, he should carefully read this screening order  
21 and focus his efforts on curing the deficiencies set forth above. Plaintiff must demonstrate how  
22 the conditions complained of have resulted in a deprivation of plaintiff's federal constitutional or  
23 statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the second amended  
24 complaint must allege in specific terms how each named defendant is involved. There can be no  
25 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a  
26 defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v.  
27 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
28 1978). Furthermore, vague and conclusory allegations of official participation in civil rights

1 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

10 In accordance with the above, IT IS HEREBY ORDERED that:

11 1. Plaintiff's first amended complaint, ECF No. 13, is dismissed for failure to state a  
12 claim; and

13 2. Plaintiff is granted thirty days from the date of service of this order to file a second  
14 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
15 of Civil Procedure, and the Local Rules of Practice; the second amended complaint must bear the  
16 docket number assigned this case and must be labeled "Second Amended Complaint"; plaintiff  
17 must file an original and two copies of the second amended complaint; failure to file a second  
18 amended complaint in accordance with this order will result in a recommendation that this action  
19 be dismissed.

20 Dated: January 19, 2018

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23 CAROLYN K. DELANEY  
24 UNITED STATES MAGISTRATE JUDGE  
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