



1 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

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

## 9 **II. Second Amended Complaint**

10 Plaintiff is an inmate at the California Health Care Facility in Stockton (“CHCF”). The  
11 second amended complaint identifies one nurse and three certified nursing assistants at CHCF as  
12 defendants. Plaintiff spends the majority of his second amended complaint explaining how his  
13 amnesia that was caused from falling off a board has resolved itself. ECF No. 15 at 3, 5. The  
14 remaining portions of the second amended complaint describe verbal arguments defendants  
15 engaged in on an unspecified date concerning who was responsible for helping plaintiff get to the  
16 toilet in his cell. ECF No. 15 at 3-4. In a single sentence plaintiff then states that he “tried [sic]  
17 to get in his wheel chair with the board and fell [because] it did not look like any help was going  
18 to be comeing [sic] any time soon....” Id. at 4. Plaintiff states that defendants violated prison  
19 regulations by bickering with one another rather than helping him. Id. at 7. By way of relief,  
20 plaintiff seeks five million dollars in damages. Id. at 6.

## 21 **III. Analysis**

22 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon  
23 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in  
24 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467  
25 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt  
26 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under  
27 this standard, the court must accept as true the allegations of the complaint in question, Hospital  
28 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light

1 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.  
2 McKeithen, 395 U.S. 411, 421 (1969).

3 In order to state an Eighth Amendment claim for inadequate medical care, “a prisoner  
4 must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious  
5 medical needs.” Estelle v. Gamble, 429 U.S. 97, 106 (1976). Plaintiff must plead sufficient facts  
6 to permit the court to infer that (1) plaintiff had a “serious medical need,” and that (2) individual  
7 defendants were “deliberately indifferent” to that need. Jett v. Penner, 439 F.3d 1091, 1096 (9th  
8 Cir.2006). A showing of merely inadvertent or even negligent medical care is not enough to  
9 establish a constitutional violation. Estelle, 429 U.S. at 105–06; Frost v. Agnos, 152 F.3d 1124,  
10 1130 (9th Cir.1998). A difference of opinion about the proper course of treatment is not  
11 deliberate indifference, nor does a dispute between a prisoner and prison officials over the  
12 necessity for or extent of medical treatment amount to a constitutional violation. See, e.g.,  
13 Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th  
14 Cir. 1989).

15 Here, plaintiff focuses on the state regulations that defendants purportedly violated.  
16 However, that is not sufficient to establish a separate and independent cause of action for  
17 violating the Eighth Amendment. At most, plaintiff establishes that defendants were negligent in  
18 arguing with each other rather than immediately attending to plaintiff’s medical needs. For these  
19 reasons, the court finds the allegations in plaintiff's second amended complaint so vague and  
20 conclusory that it is unable to determine whether the current action is frivolous or fails to state a  
21 claim for relief. Although the Federal Rules adopt a flexible pleading policy, a complaint must  
22 give fair notice and state the elements of the claim plainly and succinctly. Jones v. Cmty. Redev.  
23 Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of  
24 particularity overt acts which defendants engaged in that support plaintiff's claim. Id.  
25 Accordingly, the second amended complaint must be dismissed. The court will, however, grant  
26 leave to file a third amended complaint.

27 **IV. Leave to Amend**

28 If plaintiff chooses to file a third amended complaint, plaintiff must demonstrate how the

1 conditions complained of have resulted in a deprivation of plaintiff's federal constitutional or  
2 statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the third amended  
3 complaint must allege in specific terms how each named defendant is involved. There can be no  
4 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a  
5 defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v.  
6 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
7 1978). Furthermore, vague and conclusory allegations of official participation in civil rights  
8 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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

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

- 18 1. Plaintiff's second amended complaint is dismissed; and
- 19 2. Plaintiff is granted thirty days from the date of service of this order to file a third  
20 amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
21 of Civil Procedure, and the Local Rules of Practice; the third amended complaint must bear the  
22 docket number assigned this case and must be labeled "Third Amended Complaint"; plaintiff  
23 must file an original and two copies of the third amended complaint; failure to file a third  
24 amended complaint in accordance with this order will result in a recommendation that this action  
25 be dismissed.

26 Dated: February 5, 2018

27   
28 CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE