

1 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

2 The court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
4 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
5 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
6 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

7 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
8 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
9 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
10 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
11 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
12 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
13 Cir. 1989); Franklin, 745 F.2d at 1227.

14 In order to avoid dismissal for failure to state a claim a complaint must contain more than
15 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
16 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
17 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
18 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
19 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
20 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
21 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
22 at 678. When considering whether a complaint states a claim upon which relief can be granted,
23 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
24 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
25 U.S. 232, 236 (1974).

26 Plaintiff names one defendant, the Acting Warden of California Health Care Facility.
27 (ECF No. 1.) He alleges that, on July 6, 2016, he fell off a wood transfer board used as a bridge
28 to get from his bed to his wheelchair. He fell onto the concrete floor of his cell and was knocked

1 unconscious. (Id.) Plaintiff claims that prison staff were not trained to use the board safely, and
2 that no staff responded to the emergency button when plaintiff pushed it for help. (Id.)

3 The court finds the allegations in plaintiff's complaint so vague and conclusory that it fails
4 to state a claim upon which relief can be granted. Although the Federal Rules of Civil Procedure
5 adopt a flexible pleading policy, a complaint must give fair notice and state the elements of the
6 claim plainly and succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir.
7 1984). Plaintiff must allege with at least some degree of particularity overt acts which defendants
8 engaged in that support plaintiff's claim. Id.

9 Additionally, supervisory personnel are generally not liable under §1983 for the actions of
10 their employees under a theory of respondeat superior and, therefore, when a named defendant
11 holds a supervisory position, the causal link between him and the claimed constitutional
12 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979).
13 A defendant may be held liable as a supervisor under § 1983 if there exists "either (1) his or her
14 personal involvement in the constitutional deprivation; or (2) a sufficient causal connection
15 between the supervisor's wrongful conduct and the constitutional violation." Starr v. Baca, 652
16 F.3d 1202, 1207 (9th Cir. 2011), citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989). A
17 supervisor's own culpable action or inaction in the training, supervision, or control of his
18 subordinates may establish supervisory liability. Starr, 652 F.3d at 1208. However, allegations
19 do not state a cause of action against a supervisory defendant where "there is no allegation of a
20 *specific* policy implemented by the Defendant[] or a *specific* event or events instigated by the
21 Defendant[] that led to" the purportedly unconstitutional conduct. Hydrick v. Hunter, 669 F.3d
22 937, 942 (9th Cir. 2012) (emphasis in original).

23 For these reasons, plaintiff's complaint must be dismissed. The court will, however, grant
24 leave to file an amended complaint. If plaintiff chooses to amend the complaint, plaintiff must
25 demonstrate how the conditions complained of have resulted in a deprivation of plaintiff's
26 constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, plaintiff's
27 amended complaint must allege in specific terms how each named defendant is involved. There
28 can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection

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

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

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

12 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

13 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
14 shall be collected and paid in accordance with this court's order to the Director of the California
15 Department of Corrections and Rehabilitation filed concurrently herewith.

16 3. Plaintiff's complaint is dismissed.

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

23 Dated: April 27, 2017



24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE