



1 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
2 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
3 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
4 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at  
5 1227.

6 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain  
7 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the  
8 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic  
9 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
10 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a  
11 formulaic recitation of the elements of a cause of action;” it must contain factual allegations  
12 sufficient “to raise a right to relief above the speculative level.” Id. at 555. However, “[s]pecific  
13 facts are not necessary; the statement [of facts] need only ‘give the defendant fair notice of what  
14 the . . . claim is and the grounds upon which it rests.’” Erickson v. Pardus, 551 U.S. 89, 93  
15 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal quotations marks omitted).  
16 In reviewing a complaint under this standard, the court must accept as true the allegations of the  
17 complaint in question, Erickson, 551 U.S. at 93, and construe the pleading in the light most  
18 favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other  
19 grounds, Davis v. Scherer, 468 U.S. 183 (1984).

20 Named as defendants are Warden Lizarraga and Secretary Kern. (ECF No. 2 at 6.)  
21 Plaintiff appears to challenge the validity of a prison disciplinary charging him with attempted  
22 murder. Plaintiff was found guilty and assessed 359 days of time credits. (Id. at 29.) While  
23 plaintiff alleges violations of the First Amendment as well as his right to due process and equal  
24 protection, it is unclear how plaintiff is alleging these rights were violated. For these reasons, the  
25 complaint is dismissed with leave to amend. If plaintiff files an amended complaint, he must  
26 clarify the grounds on which he challenges his disciplinary conviction.

27 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
28 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended

1 complaint be complete in itself without reference to any prior pleading. This requirement exists  
2 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.  
3 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original  
4 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an  
5 original complaint, each claim and the involvement of each defendant must be sufficiently  
6 alleged.

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

8 1. Plaintiff's complaint is dismissed.

9 2. Within thirty days from the date of this order, plaintiff shall complete the attached  
10 Notice of Amendment and submit the following documents to the court:

11 a. The completed Notice of Amendment; and

12 b. An original and one copy of the Amended Complaint.

13 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the  
14 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must  
15 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

16 Failure to file an amended complaint in accordance with this order may result in the  
17 dismissal of this action.

18 Dated: August 9, 2017

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20 \_\_\_\_\_  
21 KENDALL J. NEWMAN  
22 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DON LaFLAMME,  
Plaintiff,  
v.  
KERN, et al.,  
Defendants.

No. 2:17-cv-1550 KJN P

NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order  
filed \_\_\_\_\_.

DATED: \_\_\_\_\_ Amended Complaint

\_\_\_\_\_  
Plaintiff