



1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

3 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”  
4 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
5 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
6 meritless legal theories or whose factual contentions are clearly baseless.” Jackson v. Arizona,  
7 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute  
8 on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490  
9 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,  
10 has an arguable legal and factual basis. Id.

11 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
12 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
13 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550  
14 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
15 However, in order to survive dismissal for failure to state a claim, a complaint must contain more  
16 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
17 allegations sufficient “to raise a right to relief above the speculative level.” Id. (citations  
18 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that  
19 merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original)  
20 (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d  
21 ed. 2004)).

22 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
23 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell  
24 Atl. Corp., 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
25 content that allows the court to draw the reasonable inference that the defendant is liable for the  
26 misconduct alleged.” Id. (citing Bell Atl. Corp., 550 U.S. at 556). In reviewing a complaint  
27 under this standard, the court must accept as true the allegations of the complaint in question,  
28 Hospital Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), as well as construe the pleading

1 in the light 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 **III. Screening Order**

4 Plaintiff's allegations are too vague to proceed. He alleges that, on July 17, 2017,  
5 defendants "establish[ed] the custom and policy of forcing their way, causing harassment,  
6 detriment of character/name defamed, emotional, and mental anguish." ECF No. 1 at 3. It is  
7 unclear from this allegation what actions defendants took or how they injured plaintiff.<sup>1</sup> The  
8 court will dismiss this complaint and give plaintiff leave to amend in order to clarify his  
9 allegations.

### 10 **IV. Leave to Amend**

11 Plaintiff's complaint is dismissed with leave to amend. If plaintiff chooses to file an  
12 amended complaint it should observe the following:

13 Plaintiff must demonstrate how each of the named defendants, acting under color of state  
14 law, has violated his federal constitutional or statutory rights. See West v. Atkins, 487 U.S. 42,  
15 48 (1988). The amended complaint must allege the circumstances of defendants' alleged  
16 violations in specific terms by describing how, when, and where each defendant violated  
17 plaintiff's rights. Plaintiff is cautioned that there can be no liability under 42 U.S.C. § 1983  
18 unless there is some affirmative link or connection between a defendant's actions and the claimed  
19 deprivation. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Finally, vague and conclusory  
20 allegations of official participation in civil rights violations are not sufficient. See Ivey v. Board  
21 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

22 The amended complaint must also contain a caption including the names of all defendants.  
23 Fed. R. Civ. P. 10(a).

24 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See  
25 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

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26 <sup>1</sup> Additionally, given the very recent date of the alleged incident, there is a strong possibility that  
27 plaintiff has not exhausted his administrative remedies prior to filing this suit. Nevertheless,  
28 plaintiffs are not required to plead exhaustion and, as such, the court will not dismiss the action  
on this basis. See Jones v. Bock, 549 U.S. 199, 214-216 (2007).

1 Any amended complaint must be written or typed so that it so that it is complete in itself  
2 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
3 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
4 earlier filed complaint no longer serves any function in the case. See Forsyth v. Humana, 114  
5 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter  
6 being treated thereafter as non-existent.””) (quoting Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
7 1967)).

8 Finally, the court notes that any amended complaint should be as concise as possible in  
9 fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of  
10 procedural or factual background which has no bearing on his legal claims.

#### 11 **V. Summary of the Order for Pro Se Litigant**

12 You have been granted in forma pauperis status and will not have to pay the entire filing  
13 fee immediately.

14 The court has found that your claims, as stated, are not suitable to proceed. It is unclear  
15 what your precise allegations are or how each of the named defendants personally violated your  
16 rights. You are being given a chance to submit an amended complaint which better explains your  
17 claims.

#### 18 **VI. Conclusion**

19 Accordingly, IT IS HEREBY ORDERED that:

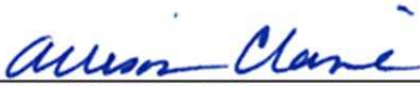
- 20 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is granted.
- 21 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected  
22 in accordance with the notice to the California Department of Corrections and  
23 Rehabilitation filed concurrently herewith.
- 24 3. The Clerk of Court shall update the docket to reflect that plaintiff’s name is  
25 properly “Armando Herrera” rather than “Herrera Armando.”
- 26 4. Plaintiff’s complaint is dismissed with leave to amend within 30 days of service of  
27 this order.

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5. Failure to comply with this order may result in dismissal of this action.

DATED: August 4, 2017

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE