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8	UNITED STATE	ES DISTRICT COURT
9	FOR THE EASTERN D	DISTRICT OF CALIFORNIA
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11	DALLAS JOSHUA JAMES MYERS,	No. 2:18-cv-0111-EFB P
12	Plaintiff,	
13	v.	ORDER
14	EDMUND BROWN, et al.,	
15	Defendants.	
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17	Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C.	
18	§ 1983, has filed a complaint (ECF No. 1) and	an application to proceed in forma pauperis (ECF
19	No. 7). ¹	
20	Application to Pro	ceed In Forma Pauperis
21	The court has reviewed plaintiff's appl	ication and finds that it makes the showing required
22	by 28 U.S.C. § 1915(a)(1). Accordingly, plain	ntiff's request to proceed in forma pauperis is
23	granted.	
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25	/////	
26	¹ This is the second IFP application in this case. The first (ECF No. 2) was filed	
27	contemporaneously with plaintiff's complaint. It appears, based on plaintiff's address, that the second IFP application may have been prompted by his release from prison. Thus, the court will	
28	consider only the latter. The first application i	
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1	Screening
2	I. <u>Legal Standards</u>
3	The court is required to screen complaints by individuals proceeding in forma pauperis.
4	28 U.S.C. § 1915(e)(2). It should dismiss a case if it determines that the action is frivolous or
5	malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a
6	defendant immune from such relief. 28 U.S.C. § 1915(e)(2)(B).
7	A claim "is [legally] frivolous where 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). "[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
10	meritless legal theories or whose factual contentions are clearly baseless." Jackson v. Arizona,
11	885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute
12	on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490
13	U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,
14	has an arguable legal and factual basis. Id.
15	"Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the
16	claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of
17	what the claim is and the grounds upon which it rests."" Bell Atl. Corp. v. Twombly, 550 U.S.
18	544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
19	However, in order to survive dismissal for failure to state a claim, a complaint must contain more
20	than "a formulaic recitation of the elements of a cause of action;" it must contain factual
21	allegations sufficient "to raise a right to relief above the speculative level." Id. (citations
22	omitted). "[T]he pleading must contain something more than a statement of facts that
23	merely creates a suspicion [of] a legally cognizable right of action." Id. (alteration in original)
24	(quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d
25	ed. 2004)).
26	"[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to
27	relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl.

Corp., 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content 2

that allows the court to draw the reasonable inference that the defendant is liable for the
misconduct alleged." *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint
under this standard, the court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading
in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

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II. <u>Analysis</u>

8 Plaintiff brings this action against twelve defendants and his complaint contains various, 9 unrelated claims. He alleges, *inter alia*, that: (1) in retaliation for filing a lawsuit, unnamed 10 correctional officers at Mule Creek State Prison subjected him to cell searches and confiscations 11 of food and hygiene products (ECF No. 1 at 10-11); (2) that defendant Richard Weiss, a physician 12 and plaintiff's primary care provider, subjected him to unwanted sexual advances and interfered 13 with his medical care when he refused those advances (*id.* at 11); (3) that his rights under the Americans with Disabilities Act were violated² when he was assigned to an upper bunk bed in 14 15 spite of his ambulatory limitations (*id.* at 8); (4) that, after plaintiff's transfer to California State 16 Prison, Corcoran, he was not provided with psychiatric medication, his legal mail went 17 undelivered, and his conditions of confinement were unconstitutional (id. at 9); and (5) that 18 Governor Brown overpopulates state prisons "without providing proper [a]ccommodations to ... 19 prisoners including the plain[t]iff." These unrelated claims against multiple defendants violate 20 the federal rules of civil procedure. Federal Rule of Civil Procedure 20(a)(2) requires that the 21 right to relief against multiple defendants arise out of common events and contain common 22 questions of law or fact. 23 The court also notes that plaintiff's complaint, although typed, is extremely difficult to

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read. Many of the claims are set out in lengthy, unbroken paragraphs. *See, e.g.*, ECF No. 1 at 1011. Additionally, the type font is extremely faint and, at times, almost impossible to make out.

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² Plaintiff appears to bring this claim against Mule Creek State Prison itself. ECF No. 1 at
8. This is not a viable defendant insofar as the prison is not a "person" within the meaning of
section 1983. *See Allison v. California Adult Authority*, 419 F.2d 822, 823 (9th Cir. 1969).

See, e.g., id. at 16-17. Although he is not an attorney, plaintiff bears the responsibility of
 ensuring that the court (and any defendants who are ultimately served) can make sense of his
 allegations.

4 Finally, the court recognizes that plaintiff has attached to the end of his complaint a 5 "motion to leave of court to incorporate a third party plaintiff." ECF No. 1 at 19. Therein, 6 plaintiff requests that Maurice Godoy – who is plaintiff's "jailhouse lawyer" – be designated a 7 third-party plaintiff to this suit. Id. at 19. Plaintiff misunderstands third party practice under the 8 federal rules. Under those rules, after the plaintiff names a defendant as a party, that defendant 9 may as a third party plaintiff, file a third party complaint against a third party defendant who "is 10 or may be liable to [the defendant and third party plaintiff] for all or part of the claim against it." 11 Fed. R. Civ. P. 14(a)(1). Additionally, when a claim is asserted against a plaintiff in a lawsuit, 12 "the plaintiff may bring in a third party if this rule would allow a defendant to do so." Fed. R. 13 Civ. P. 14(b). These conditions not being met, plaintiff's request to have Mr. Godoy designated a 14 third-party plaintiff is denied.

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Leave to Amend

16 Plaintiff may choose to amend his complaint. He is cautioned that any amended 17 complaint must identify as a defendant only persons who personally participated in a substantial 18 way in depriving him of his constitutional rights. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 19 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, 20 participates in another's act or omits to perform an act he is legally required to do that causes the 21 alleged deprivation). Plaintiff may also include any allegations based on state law that are so 22 closely related to his federal allegations that "they form the same case or controversy." See 28 23 U.S.C. § 1367(a).

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

Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Nor, as mentioned above, may he bring
unrelated claims against multiple defendants. *Id.*

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	Any amended complaint should be as concise as possible in fulfilling the above	
9	requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual	
10	background which has no bearing on his legal claims. He should also take pains to ensure that his	
11	amended complaint is as legible as possible. This refers not only to penmanship, but also spacing	
12	and organization. Plaintiff should carefully consider whether each of the defendants he names	
13	actually had involvement in the constitutional violations he alleges. A "scattershot" approach in	
14	which plaintiff names dozens of defendants will not be looked upon favorably by the court.	
15	Conclusion	
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16	Accordingly, it is ORDERED that:	
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16 17 18 19 20	Accordingly, it is ORDERED that: 1. Plaintiff's earlier application to proceed in forma pauperis (ECF No. 2) is DENIED as MOOT; 2. Plaintiff's most recent application to proceed in forma pauperis (ECF No. 7) is GRANTED;	
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1	5. Failure to file an amended complaint within the foregoing deadline will result in a
2	recommendation that this action be dismissed for failure to prosecute.
3	DATED: February 11, 2019.
4	EDMUND F. BRENNAN
5	UNITED STATES MAGISTRATE JUDGE
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