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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**Alex Aguilar,**  
Plaintiff  
-vs-  
**Lewis, et al.,**  
Defendants

CV-09-1198-PHX-NVW (JRI)

**REPORT & RECOMMENDATION  
re Screening of Amended Complaint**

**I. MATTER UNDER CONSIDERATION**

This matter arises out of a complaint by Plaintiff, a California prisoner presently incarcerated in the La Palma Correctional Center, a privately operated contract prison located in Eloy, Arizona, alleging a denial of emergency medical care while a prisoner.

Plaintiff has filed a “First Amended Complaint” (#12) prior to service of an answer pursuant to Fed.R.Civ.P. 15(a). The Court is required to screen that complaint pursuant to 28 U.S.C. § 1915A(a).

This matter is before the undersigned on referral from the District Judge, and the determination of the undersigned is dispositive of Plaintiff’s claims. Accordingly, the undersigned makes the following proposed findings of fact, report, and recommendation pursuant to Rule 72(b), Federal Rules of Civil Procedure, and 28 U.S.C. §28(b)(1)(B) and (C).

**II. RELEVANT PROCEDURAL BACKGROUND**

**A. Original Complaint**

Plaintiff’s original Complaint was filed June 3, 2009 (#1). That Complaint alleged two counts for constitutionally inadequate medical care and retaliation arising out of a

1 incident on April 15, 2009 in which Plaintiff's leg was broken, and the ensuing events.  
2 Plaintiff named as defendants Lieutenant Lewis, Warden DeRosa, Registered Nurse Mazzola,  
3 and Secretary Cate. In the initial Screening Order entered July 8, 2009 , the Court found that  
4 Plaintiff failed to state a claim for retaliation, and failed to allege facts to establish a claim  
5 against various defendants. As a result, an answer to the inadequate medical care claim was  
6 required from Defendant Lewis.

7  
8 **B. First Amended Complaint**

9 In response to the initial Screening Order, Plaintiff filed a Motion to Amend (#9) and  
10 lodged a proposed First Amended Complaint. The undersigned granted (#11) the motion to  
11 amend as a first amendment of right, but noted that the amended pleading failed to allege any  
12 facts, but instead referenced a non-existent attachment. The First Amended Complaint (#12)  
13 was filed. However, Plaintiff was advised that a recommendation of dismissal for failure to  
14 state a claim was likely, and screening and service stayed for twenty days to permit Plaintiff  
15 an opportunity to amend. Plaintiff has not moved to amend, and the twenty days expired  
16 August 20, 2009.

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18 **III. APPLICATION OF LAW TO FACTS**

19 28 U.S.C. § 1915A requires the Court to screen complaints brought by prisoners  
20 seeking relief against a governmental entity or officer or employee of a governmental entity.  
21 The Court must dismiss a complaint or portion thereof if the Plaintiff has raised claims that  
22 are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
23 granted, or that seek monetary relief from a defendant who is immune from such relief. *Id.*  
24 42 U.S.C. § 1997 applies the same standard to such complaints even if the defendants are  
25 not governmental entities, or officers or employees of a governmental entity. *Id.*

26 In screening complaints, however, the Court is obliged to liberally construe the  
27 Plaintiff's complaint:

28 The handwritten pro se document is to be liberally construed. . . . [A]

1 pro se complaint, "however inartfully pleaded," must be held to "less  
2 stringent standards than formal pleadings drafted by lawyers" and can  
3 only be dismissed for failure to state a claim if it appears " 'beyond  
doubt that the plaintiff can prove no set of facts in support of his claim  
which would entitle him to relief.' "

4 *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519, 520-21  
5 (1972)).

6 To state a claim under §1983, a plaintiff must allege supporting facts that (1) the  
7 conduct about which he complains was committed by a person acting under the color of state  
8 law and (2) the conduct deprived him of a federal constitutional or statutory right. *Wood v.*  
9 *Ostrander*, 879 F.2d 583, 587 (9th Cir. 1989); see *Devereaux v. Abbey*, 263 F.3d 1070, 1074  
10 (9th Cir. 2001).

11 Here, Plaintiff's First Amended Complaint asserts a single claim for denial of medical  
12 care, but fails to allege any "Supporting Facts" but instead includes the reference "See  
13 Attachment in Back." No attachment was filed. The only facts alleged are in the "Injury"  
14 portion of the form complaint, and simply allege a denial by "Defendants" of emergency  
15 medical treatment. Plaintiff again names Defendants Lewis, DeRosa, Mazzola and Cate, but  
16 makes no allegation of any specific conduct by any of them and makes no connection  
17 between any of them and the injury he sustained. A plaintiff must allege that he suffered a  
18 specific injury as a result of the conduct of a particular defendant and he must allege an  
19 affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423  
20 U.S. 362, 371-72, 377 (1976). "A plaintiff must allege facts, not simply conclusions, that  
21 show that an individual was personally involved in the deprivation of his civil rights." *Barren*  
22 *v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

23 Plaintiff's sole count fails to state a claim against any defendant. Accordingly,  
24 dismissal of the entire complaint is appropriate.

#### 25 26 **IV. RECOMMENDATION**

27 **IT IS THEREFORE RECOMMENDED** pursuant to 28 U.S.C. § 1915A, that  
28 Plaintiff's First Amended Complaint (#12) be dismissed, without prejudice.

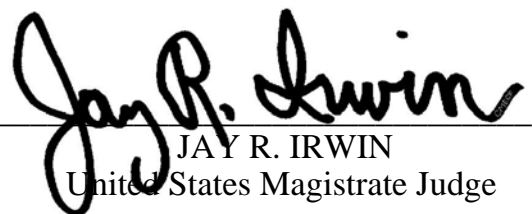
1 **IT IS FURTHER RECOMMENDED** that Plaintiff be given 20 days to file a motion  
2 to amend and lodge a proposed second amended complaint, and that if Plaintiff fails to do  
3 so, that the Clerk of Court must enter a judgment of dismissal of this action without prejudice  
4 and without further notice to Plaintiff.

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6 **V. EFFECT OF RECOMMENDATION**

7 This recommendation is not an order that is immediately appealable to the Ninth  
8 Circuit Court of Appeals. Any notice of appeal pursuant to *Rule 4(a)(1), Federal Rules of*  
9 *Appellate Procedure*, should not be filed until entry of the district court's judgment.

10 However, pursuant to *Rule 72, Federal Rules of Civil Procedure*, the parties shall have  
11 ten (10) days from the date of service of a copy of this recommendation within which to file  
12 specific written objections with the Court. Thereafter, the parties have ten (10) days within  
13 which to file a response to the objections. Failure to timely file objections to any factual  
14 determinations of the Magistrate Judge will be considered a waiver of a party's right to *de*  
15 *novo* consideration of the factual issues and will constitute a waiver of a party's right to  
16 appellate review of the findings of fact in an order or judgment entered pursuant to the  
17 recommendation of the Magistrate Judge.

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19 DATED: September 9, 2009

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JAY R. IRWIN  
United States Magistrate Judge