

1 monetary relief against a defendant who is immune from such relief. See 28 U.S.C. §§ 1915A,
2 1915(e)(2); 42 U.S.C. § 1997e.

3 After careful review of the Complaint, the Court found that plaintiff's allegations appeared
4 insufficient to state a claim against any named defendant. Accordingly, the Complaint was
5 dismissed with leave to amend. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (holding
6 that a *pro se* litigant must be given leave to amend his complaint unless it is absolutely clear that
7 the deficiencies of the complaint cannot be cured by amendment). Plaintiff was ordered, if he
8 desired to pursue this action, to file a First Amended Complaint no later than December 30, 2016,
9 remedying the deficiencies discussed in the Court's Order. Further, plaintiff was admonished that,
10 if he failed to timely file a First Amended Complaint or failed to remedy the deficiencies of his
11 pleading as discussed therein, then the Court would recommend that the action be dismissed with
12 prejudice.

13 On December 23, 2016, plaintiff filed a First Amended Complaint ("FAC"). The FAC names
14 as defendants Orry Marciano, a physician's assistant at CVSP; Dr. Santiago, an eye doctor with
15 an outside clinic; LVN Beatres, at CVSP; a "doe" doctor at the Riverside Hospital; and the Warden
16 of CVSP. Plaintiff names all defendants except the Warden in both their individual and official
17 capacities. (ECF No. 10 at 3-4). Plaintiff purports to raise one claim arising from inadequate
18 medical treatment and plaintiff's "disability." (*Id.* at 5). The FAC appears to be seeking an
19 investigation. (*Id.* at 6). The Court has once again screened the FAC prior to ordering service.

20 The Court's screening of the pleading under the foregoing statutes is governed by the
21 following standards. A complaint may be dismissed as a matter of law for failure to state a claim
22 for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable
23 legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990); see also Rosati
24 v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir. 2015) (in determining whether a complaint should be
25 dismissed under the PLRA, courts apply the standard of Fed. R. Civ. P. 12(b)(6)). Further, with
26 respect to a plaintiff's pleading burden, the Supreme Court has held that: "a plaintiff's obligation
27 to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions,
28

1 and a formulaic recitation of the elements of a cause of action will not do. ... Factual allegations
2 must be enough to raise a right to relief above the speculative level.” Bell Atlantic Corp. v.
3 Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007) (internal
4 citations omitted, alteration in original); see also Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937,
5 1949, 173 L. Ed. 2d 868 (2009) (To avoid dismissal for failure to state a claim, “a complaint must
6 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
7 face.’ A claim has facial plausibility when the plaintiff pleads factual content that allows the court
8 to draw the reasonable inference that the defendant is liable for the misconduct alleged.” (internal
9 citation omitted)); Lazy Y Ranch LTD v. Behrens, 546 F.3d 580, 588 (9th Cir. 2008) (“To survive
10 a motion to dismiss for failure to state a claim, the plaintiff must allege ‘enough facts to state a
11 claim to relief that is plausible on its face.’” (citing Twombly, 550 U.S. at 570)). Since plaintiff is
12 appearing *pro se*, the Court must construe the allegations of the pleading liberally and must afford
13 plaintiff the benefit of any doubt. See Karim-Panahi v. Los Angeles Police Dep’t, 839 F.2d 621,
14 623 (9th Cir. 1988). Finally, in determining whether a complaint states a claim on which relief may
15 be granted, allegations of material fact are taken as true and construed in the light most favorable
16 to plaintiff. Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989). However, the “tenet that
17 a court must accept as true all of the allegations contained in a complaint is inapplicable to legal
18 conclusions.” Iqbal, 556 U.S. at 678.

19 After careful review of the FAC, the Court finds that plaintiff’s allegations once again appear
20 insufficient to state a claim against any named defendant. Accordingly, the FAC is dismissed with
21 leave to amend. **If plaintiff desires to pursue this action, he is ORDERED to file a Second**
22 **Amended Complaint no later than March 17, 2017, remedying the deficiencies discussed**
23 **below. Further, plaintiff is admonished that if he fails to timely file a Second Amended**
24 **Complaint or fails to remedy the deficiencies of this pleading as discussed herein, the**
25 **Court will recommend that the action be dismissed with prejudice.**¹

26
27 ¹ Plaintiff is advised that this Court’s determination herein that the allegations in the First
28 Amended Complaint are insufficient to state a particular claim should not be seen as *dispositive*
of that claim. Accordingly, while this Court believes that you have failed to plead sufficient factual

1 **DISCUSSION**

2 **A. PLAINTIFF’S FAC FAILS TO SET FORTH A SHORT AND PLAIN STATEMENT IN**
3 **COMPLIANCE WITH FEDERAL RULE OF CIVIL PROCEDURE 8.**

4 Plaintiff’s FAC still fails to comply with Federal Rule of Civil Procedure 8(a) and 8(d). Fed.

5 R. Civ. P. 8(a) states:

6 A pleading that states a claim for relief must contain: (1) a short and
7 plain statement of the grounds for the court’s jurisdiction, unless the
8 court already has jurisdiction and the claim needs no new jurisdictional
9 support; (2) **a short and plain statement of the claim showing that
the pleader is entitled to relief**; and (3) a demand for the relief
sought, which may include relief in the alternative or different types of
relief.

10 (Emphasis added). Rule 8(d)(1) provides: “Each allegation **must be simple, concise, and**
11 **direct**. No technical form is required.” (Emphasis added). Although the Court must construe a
12 *pro se* plaintiff’s pleadings liberally, a plaintiff nonetheless must allege a minimum factual and legal
13 basis for each claim that is sufficient to give each defendant fair notice of what plaintiff’s claims
14 are and the grounds upon which they rest. See, e.g., Brazil v. United States Department of the
15 Navy, 66 F.3d 193, 199 (9th Cir. 1995); McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991)
16 (complaint must give defendants fair notice of the claims against them). If a plaintiff fails to clearly
17 and concisely set forth allegations sufficient to provide defendants with notice of which defendant
18 is being sued on which theory and what relief is being sought against them, the complaint fails to
19 comply with Rule 8. See, e.g., McHenry v. Renne, 84 F.3d 1172, 1177-79 (9th Cir. 1996); Nevijel
20 v. Northcoast Life Ins. Co., 651 F.2d 671, 674 (9th Cir. 1981). Moreover, failure to comply with
21 Rule 8 constitutes an independent basis for dismissal of a complaint that applies even if the claims
22 in a complaint are not found to be wholly without merit. See McHenry, 84 F.3d at 1179; Nevijel,
23 651 F.2d at 673.

24 _____
25 matter in your pleading, accepted as true, to state a claim to relief that is plausible on its face, you
26 are not required to omit any claim or defendant in order to pursue this action. However, if you
27 decide to pursue a claim in a Second Amended Complaint that this Court has found to be
28 insufficient, then this Court, pursuant to the provisions of 28 U.S.C. § 636, ultimately will submit
to the assigned district judge a recommendation that such claim be dismissed with prejudice for
failure to state a claim, subject to your right at that time to file Objections with the district judge as
provided in the Local Rules Governing Duties of Magistrate Judges.

1 First, the cover page of the FAC names only Marciano as a defendant, but the body of the
2 FAC lists several other defendants. Plaintiff once again is admonished that, irrespective of his *pro*
3 *se* status, he must comply with the Federal Rules of Civil Procedure and the Local Rules of the
4 United States District Court for the Central District of California. See, e.g., Briones v. Riviera Hotel
5 & Casino, 116 F.3d 379, 382 (9th Cir. 1997) (“*pro se* litigants are not excused from following court
6 rules”); L.R. 1-3. Pursuant to Fed. R. Civ. P. 10, the caption of the pleading must include all
7 defendants listed in the body of the pleading.

8 Additionally, plaintiff names most of the defendants in their official capacities. (ECF No. 10
9 at 3-4). It appears that defendants Marciano, Beatres, and the Warden are employees of the
10 California Department of Corrections and Rehabilitation (“CDCR”), which is a state agency. In Will
11 v. Michigan Department of State Police, 491 U.S. 58, 64-66, 109 S. Ct. 2304, 105 L. Ed. 2d 45
12 (1989), the Supreme Court held that states, state agencies, and state officials sued in their official
13 capacities are not persons subject to civil rights suits under 42 U.S.C. § 1983. In addition, the
14 Eleventh Amendment bars federal jurisdiction over suits by individuals against a State and its
15 instrumentalities, unless either the State consents to waive its sovereign immunity or Congress
16 abrogates it. Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 99-100, 104 S. Ct. 900,
17 79 L. Ed. 2d 67 (1984). To overcome this Eleventh Amendment bar, the State’s consent or
18 Congress’ intent must be “unequivocally expressed.” Pennhurst, 465 U.S. at 99. While California
19 has consented to be sued in its own courts pursuant to the California Tort Claims Act, such
20 consent does not constitute consent to suit in federal court. See BV Engineering v. Univ. of
21 California, 858 F.2d 1394, 1396 (9th Cir. 1988); see also Atascadero State Hospital v. Scanlon,
22 473 U.S. 234, 241, 105 S. Ct. 3142, 87 L. Ed. 2d 171 (1985) (holding that Art. III, § 5 of the
23 California Constitution does not constitute a waiver of California’s Eleventh Amendment immunity).
24 Finally, Congress has not repealed State sovereign immunity against suits under 42 U.S.C. §
25 1983. Plaintiff’s FAC does not appear to be seeking monetary damages, but, to the extent that
26 he wishes to seek monetary damages arising from any alleged civil rights violation from
27 defendants Marciano, Beatres, or the Warden, plaintiff may not maintain such claims against these
28 defendants in their official capacities.

1 Further, to the extent that plaintiff wishes to seek monetary damages from defendant Dr.
2 Santiago, or the “doe” doctor, these defendants appear to be employed by outside medical
3 facilities. However, the Supreme Court has held that an “official-capacity suit is, in all respects
4 other than name, to be treated as a suit against the entity.” Kentucky v. Graham, 473 U.S. 159,
5 166, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985). Such a suit “is *not* a suit against the official
6 personally, for the real party in interest is the entity.” Graham, 473 U.S. at 166 (emphasis in
7 original). Accordingly, plaintiff’s claims against the outside doctors in their official capacities are
8 the same as a claim against their employers. To the extent that plaintiff may be purporting to state
9 a claim against an outside medical facility pursuant to Monell v. New York City Dep’t of Social
10 Servs., 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), the Supreme Court in Monell
11 held that a local government entity “may not be sued under § 1983 for an injury inflicted solely by
12 its employees or agents. Instead, it is when execution of a government’s policy or custom,
13 whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent
14 official policy, inflicts the injury that the government as an entity is responsible under § 1983.”
15 Monell, 436 U.S. at 694; see also Connick v. Thompson, 563 U.S. 51, 131 S. Ct. 1350, 1359, 179
16 L. Ed. 2d 417 (2011) (“local governments are responsible only for their own illegal acts”). Here,
17 plaintiff fails to set forth any allegations that any specific policy or custom of an outside medical
18 facility was the “actionable cause” of a specific constitutional violation. See Tsao v. Desert Palace,
19 Inc., 698 F.3d 1128, 1146 (9th Cir. 2012) (“Under Monell, a plaintiff must also show that the policy
20 at issue was the ‘actionable cause’ of the constitutional violation, which requires showing both but
21 for and proximate causation.”). In addition, liability against a local government entity may not be
22 premised on an isolated or sporadic incident. See, e.g., Trevino v. Gates, 99 F.3d 911, 918 (9th
23 Cir. 1996) (“Liability for improper custom may not be predicated on isolated or sporadic incidents;
24 it must be founded upon practices of sufficient duration, frequency and consistency that the
25 conduct has become a traditional method of carrying out policy.”); Thompson v. Los Angeles, 885
26 F.2d 1439, 1443-44 (9th Cir. 1989) (“Consistent with the commonly understood meaning of
27 custom, proof of random acts or isolated events are insufficient to establish custom.”), overruled
28 on other grounds, Bull v. City & County of San Francisco, 595 F.3d 964, 981 (9th Cir. 2010) (en

1 banc). Here, plaintiff does not set forth factual allegations concerning any practice or custom that
2 he alleges was a “traditional method of carrying out policy.”

3 In addition, to the extent that plaintiff is purporting to raise a federal civil rights claim against
4 defendant Marciano for “negligence in prescribing drugs”; against LVN Beatres for “telling [him]
5 to stop complaining”; or against any defendant for treating him with “disrespect” (ECF No. 10 at
6 3, 5-6), such allegations simply fail to allege that a specific defendant deprived plaintiff of a specific
7 right guaranteed under the Constitution or a federal statute. See West v. Atkins, 487 U.S. 42, 48,
8 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988); Karim-Panahi, 839 F.2d at 624. “A person deprives
9 another ‘of a constitutional right, within the meaning of § 1983, if he does an affirmative act,
10 participates in another’s affirmative acts, or omits to perform an act which he is legally required
11 to do that *causes* the deprivation of which [the plaintiff complains].” Leer v. Murphy, 844 F.2d
12 628, 633 (9th Cir. 1988), quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (emphasis
13 in original). General allegations that defendants acted negligently, failed to offer encouragement,
14 or disrespected plaintiff are insufficient to allege that a defendant took an affirmative act,
15 participated in another’s affirmative act, or omitted to perform an act that he was legally required
16 to do that allegedly *caused a constitutional deprivation*.

17 In addition, the FAC names the Warden of CVSP as a defendant, but plaintiff does not set
18 forth any factual allegations against the Warden. Supervisory personnel are not liable under
19 Section 1983 on a theory of respondeat superior. See, e.g., Redman v. County of San Diego, 942
20 F.2d 1435, 1446 (9th Cir. 1991) (en banc). In Iqbal, 556 U.S. at 676, the Supreme Court
21 reaffirmed that: “Government officials may not be held liable for the unconstitutional conduct of
22 their subordinates under a theory of respondeat superior.” The Ninth Circuit subsequently has
23 concluded that, at least in cases where the applicable standard is deliberate indifference (such as
24 for an Eighth Amendment claim), Iqbal does not foreclose a plaintiff from stating a claim for
25 supervisory liability based upon the “supervisor’s knowledge of and acquiescence in
26 unconstitutional conduct by his or her subordinates.” Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir.
27 2011). Here, plaintiff’s FAC does not set forth any factual allegations that the Warden knew of,
28 and failed to take any action in response to, any unconstitutional conduct of any subordinate.

1 Further, within plaintiff's single "claim," he raises allegations concerning "discrimination of
2 [his] disability," delays in providing medical care, failure to enter into the "system" the information
3 that plaintiff is "totally blind" in one eye, prescribing medication for "TB" when plaintiff did not have
4 "TB," problems with outside surgeries on his eye, and a denial of "equal protection." (ECF No. 10
5 at 5-6). To the extent that plaintiff may be purporting to allege a claim pursuant to the Equal
6 Protection Clause of the Fourteenth Amendment, plaintiff must allege that a specific defendant
7 intentionally treated him differently than other similarly situated individuals with a purpose to
8 discriminate against him based on his membership in a protected class. See Washington v. Davis,
9 426 U.S. 229, 239-42, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976); Freeman v. Arpaio, 125 F.3d 732,
10 737 (9th Cir. 1997) (to state an equal protection claim, "a plaintiff in a section 1983 claim must
11 show that officials intentionally acted in a discriminatory manner"). Plaintiff's FAC fails to set forth
12 a short and plain statement of any claim pursuant to the Equal Protection Clause.

13 Accordingly, it is not clear to the Court how many federal civil rights claims plaintiff is
14 purporting to raise or what the legal or factual basis may be for each of plaintiff's federal civil rights
15 claims against each defendant. The Court is mindful that, because plaintiff is appearing *pro se*,
16 the Court must construe the allegations of the FAC liberally and must afford plaintiff the benefit
17 of any doubt. See Karim-Panahi, 839 F.2d at 623. Additionally, it is particularly important in a civil
18 rights case filed by a *pro se* inmate to attempt to ascertain plaintiff's claims to protect his access
19 to the courts. See Pouncil v. Tilton, 704 F.3d 568, 575-76 (9th Cir. 2012) (the rule of liberal
20 construction "protects the rights of *pro se* litigants to self-representation and meaningful access
21 to the courts"); Alvarez v. Hill, 518 F.3d 1152, 1158 (9th Cir. 2008) (because a prisoner was
22 proceeding *pro se*, "the district court was required to 'afford [him] the benefit of any doubt' in
23 ascertaining what claims he 'raised in his complaint'" (alteration in original). Further, the Court
24 may not dismiss a claim because a *pro se* plaintiff has failed to set forth a complete legal theory
25 supporting the claim alleged. See Johnson v. City of Shelby, 135 S. Ct. 346, 346, 190 L. Ed. 2d
26 309 (2014) (*per curiam*) (noting that the Fed. Rules of Civ. Proc. "do not countenance dismissal
27 of a complaint for imperfect statement of the legal theory supporting the claim asserted"). That
28 said, the Supreme Court has made it clear that the Court has "no obligation to act as counsel or

1 paralegal to *pro se* litigants.” Pliler v. Ford, 542 U.S. 225, 231, 124 S. Ct. 2441, 159 L. Ed. 2d 338
2 (2004); see also Noll, 809 F.2d at 1448 (“courts should not have to serve as advocates for *pro se*
3 litigants”).

4 Although plaintiff need not set forth detailed factual allegations, he must plead “factual
5 content that allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555-56). A pleading
7 that merely alleges “naked assertion[s] devoid of further factual enhancement” is insufficient. *Id.*
8 (alteration in original, internal quotation marks omitted). In its present format, it would be difficult
9 for each defendant to discern what specific facts or legal theories apply to which potential claims,
10 and, as a result, it would be extremely difficult to formulate applicable defenses.

11 Therefore, the Court finds that plaintiff’s FAC still fails to comply with Rule 8.

12
13 **B. PLAINTIFF’S ALLEGATIONS ARE INSUFFICIENT TO STATE A CLAIM FOR**
14 **INADEQUATE MEDICAL CARE PURSUANT TO THE EIGHTH AMENDMENT.**

15 The Eighth Amendment’s proscription against cruel and unusual punishment also
16 encompasses the government’s obligation to provide adequate medical care to those whom it is
17 punishing by incarceration. See Estelle v. Gamble, 429 U.S. 97, 103, 97 S. Ct. 285, 50 L. Ed 2d
18 251 (1976). In order to establish a claim under the Eighth Amendment for inadequate medical
19 care, a prisoner must show that a specific defendant was deliberately indifferent to his serious
20 medical needs. See Helling v. McKinney, 509 U.S. 25, 32, 113 S. Ct. 2475, 125 L. Ed. 2d 22
21 (1993); Estelle, 429 U.S. at 106. “This includes both an objective standard -- that the deprivation
22 was serious enough to constitute cruel and unusual punishment -- and a subjective standard --
23 deliberate indifference.” Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014) (internal
24 quotation marks omitted).

25 First, to meet the objective element of a deliberate indifference claim, “a prisoner must
26 demonstrate the existence of a serious medical need.” Colwell, 763 F.3d at 1066. “A medical
27 need is serious if failure to treat it will result in significant injury or the ‘unnecessary and wanton
28 infliction of pain.” Peralta v. Dillard, 744 F.3d 1076, 1081 (9th Cir. 2014) (en banc), cert. denied,

1 135 S. Ct. 946 (2015) (internal quotation marks omitted).

2 Second, to meet the subjective element, a prisoner must “demonstrate that the prison
3 official acted with deliberate indifference.” Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004).
4 Deliberate indifference may be manifest by the intentional denial, delay or interference with a
5 plaintiff’s medical care. See Estelle, 429 U.S. at 104-05. The prison official, however, “must not
6 only ‘be aware of facts from which the inference could be drawn that a substantial risk of serious
7 harm exists,’ but that person ‘must also draw the inference.’” Toguchi, 391 F.3d at 1057 (quoting
8 Farmer v. Brennan, 511 U.S. 825, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)). Thus, an
9 inadvertent failure to provide adequate medical care, negligence, a mere delay in medical care
10 (without more), or a difference of opinion over proper medical treatment, are all insufficient to
11 constitute an Eighth Amendment violation. See Estelle, 429 U.S. at 105-07; Toguchi, 391 F.3d
12 at 1059-60; Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Shapley v. Nevada Bd. of State
13 Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985). Moreover, the Eighth Amendment does not
14 require optimal medical care or even medical care that comports with the community standard of
15 medical care. “[A] complaint that a physician has been negligent in diagnosing or treating a
16 medical condition does not state a valid claim of medical mistreatment under the Eighth
17 Amendment. Medical malpractice does not become a constitutional violation merely because the
18 victim is a prisoner.” Estelle, 429 U.S. at 106. Accordingly, even “gross negligence” is insufficient
19 to establish deliberate indifference. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir.
20 1990).

21 Here, construing plaintiff’s factual allegations liberally and affording plaintiff the benefit of
22 any doubt, it remains unclear to the Court what the factual basis may be for any Eighth
23 Amendment claim or claims that plaintiff intends to raise. Initially, plaintiff does not set forth any
24 factual allegations showing that, at the relevant time, he suffered from an objectively serious
25 medical condition.

26 Further, plaintiff appears to allege that defendant Marciano prescribed eye drops that made
27 plaintiff’s eye “worse” and denied plaintiff a vision test. (ECF No. 10 at 5). To the extent that
28 plaintiff is alleging that defendant Marciano’s choice of treatment for plaintiff’s eyes was

1 inappropriate, an inmate's difference of opinion about what would have constituted the best course
2 of treatment for his medical condition is insufficient to show that a defendant acted with deliberate
3 indifference. See, e.g., Cano v. Taylor, 739 F.3d 1214, 1217 (9th Cir 2014) (prisoner's difference
4 of opinion as to his medical treatment "is not actionable"); Toguchi, 391 F.3d at 1059-60. Rather,
5 "to prevail on a claim involving choices between alternative courses of treatment, a prisoner must
6 show that the chosen course of treatment 'was medically unacceptable under the circumstances,'
7 and was chosen 'in conscious disregard of an excessive risk to [the prisoner's] health.'" Toguchi,
8 391 F.3d at 1058 (alteration in original, citing Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir.
9 1996)). Here, plaintiff does not purport to allege that any course of treatment was medically
10 unacceptable. Moreover, to the extent that plaintiff may be alleging that any defendant was
11 negligent in prescribing medication (ECF No. 10 at 3, 6), he cannot state a federal civil rights claim
12 based on mere medical malpractice. The Eighth Amendment does not require optimal medical
13 care or even medical care that comports with the community standard of medical care. See
14 Estelle, 429 U.S. at 106; see also Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995)
15 ("a constitutional violation is not established by negligence").

16 In addition, to the extent that plaintiff is purporting to allege an Eighth Amendment claim
17 against Dr. Santiago or the "doe" doctor, plaintiff fails to set forth any factual allegations as to what
18 actions each doctor took or failed to take on which dates that plaintiff alleges constituted deliberate
19 indifference to plaintiff's serious medical needs. Plaintiff alleges that Dr. Santiago performed
20 surgery on plaintiff's right eye that resulted in total blindness, but plaintiff does not set forth any
21 factual allegations regarding this surgery. (ECF No. 10 at 3, 5). Similarly, plaintiff alleges that
22 another "doctor in Riverside" "did my left eye but also not good [sic]." (*Id.* at 5). Plaintiff does not
23 allege any details about what surgery was performed for what reason at what time. The factual
24 allegations in the FAC fail to raise a reasonable inference that any doctor was subjectively aware
25 of any facts from which the inference could have been drawn that a substantial risk of serious
26 harm to plaintiff existed with the treatment provided. In addition, as discussed above, to the extent
27 that plaintiff is alleging that a choice of treatment by either of these doctors was inappropriate,
28 plaintiff fails to set forth any factual allegations that the chosen course of treatment was medically

1 unacceptable under the circumstances.

2 Accordingly, the factual allegations in the FAC, even when accepted as true and construed
3 in the light most favorable to plaintiff, are insufficient to nudge any claim pursuant to the Eighth
4 Amendment “across the line from conceivable to plausible.” Twombly, 550 U.S. at 570.

5 *****

6 **If plaintiff desires to pursue this action, he must file a Second Amended Complaint**
7 **no later than March 17 , 2017**; The Second Amended Complaint must bear the docket number
8 assigned in this case; be labeled “Second Amended Complaint”; and be complete in and of itself
9 without reference to the original Complaint, or any other pleading, attachment or document.

10 Further, if plaintiff chooses to proceed with this action, plaintiff must use the blank Central
11 District civil rights complaint form accompanying this order, must sign and date the form, **must**
12 **completely and accurately fill out the form**, and must use the space provided in the form to set
13 forth all of the claims that he wishes to assert in a Second Amended Complaint.

14 The Clerk is directed to provide plaintiff with a blank Central District civil rights complaint
15 form.

16 **Further, plaintiff is admonished that, if he fails to timely file a Second Amended**
17 **Complaint or fails to remedy the deficiencies of this pleading as discussed herein, the**
18 **Court will recommend that the action be dismissed with prejudice.**

19 **IT IS SO ORDERED.**



20
21 DATED: February 17, 2017

22 _____
23 PAUL L. ABRAMS
24 UNITED STATES MAGISTRATE JUDGE
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