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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

KAREEM STANSBURY,	CASE NO. 1:09-cv-00549-SMS PC
Plaintiff,	ORDER DISMISSING AMENDED
v.	COMPLAINT, WITH LEAVE TO AMEND
	(Doc. 12)
UNITED STATES	THIRTY-DAY DEADLINE
GOVERNMENT, et al.,	
Defendants.	

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**Screening Order**

**I. Screening Requirement**

Plaintiff Kareem Stansbury, a federal prisoner proceeding pro se and in forma pauperis, filed this civil action on March 24, 2009, pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971), which provides a remedy for violation of civil rights by federal actors. On December 7, 2009, Plaintiff filed an amended complaint as a matter of right. Fed. R. Civ. P. 15(a).

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall

1 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
2 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the pleader  
4 is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
5 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
6 do not suffice,” Ashcroft v. Iqbal, \_\_\_ U.S. \_\_\_, \_\_\_, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic  
7 Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and courts “are not required to  
8 indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)  
9 (internal quotation marks and citation omitted). While factual allegations are accepted as true, legal  
10 conclusions are not. Iqbal, 129 S.Ct. at 1949.

11 To state a claim, Plaintiff must demonstrate that each defendant personally participated in  
12 the deprivation of his rights. Id. at 1949. This requires the presentation of factual allegations  
13 sufficient to state a plausible claim for relief. Iqbal, 129 S.Ct. at 1949-50; Moss v. U.S. Secret  
14 Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of  
15 meeting this plausibility standard. Iqbal, 129 S.Ct. at 1949-50; Moss, 572 F.3d at 969.

16 **II. Plaintiff’s Claims**

17 **A. Factual Allegations**

18 Plaintiff is currently incarcerated at the Federal Correctional Institution in Adelanto,  
19 California. The events at issue in this action occurred at the United States Penitentiary in Atwater,  
20 California. Plaintiff names the United States Government; Correctional Officers P. Lehman, D.  
21 Horstmeier, J. Pino, and D. Kolwaskie; and Lieutenant T. Miller as defendants. Plaintiff alleges  
22 claims for excessive force and denial of medical care, in violation of the Eighth Amendment, and  
23 retaliation, in violation of the First Amendment.

24 On July 15, 2008, Defendant Lehman repeatedly pulled Plaintiff’s right arm through the cell  
25 food port and dug down on it with a sharp cutting device, nipping Plaintiff’s left arm and causing  
26 serious injuries to Plaintiff’s right shoulder. Defendants Lehman, Pino, Horstmeier, Kolwaskie then  
27 denied Plaintiff medical treatment.

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1 On July 16, 2008, Defendant Miller ordered Defendant Pino to file a false incident report  
2 against Plaintiff, in retaliation for the grievance Plaintiff filed. On August 6, 2008, Defendant Miller  
3 threatened to kill Plaintiff for pursuing a grievance against him based on the false incident report.

4 **B. Excessive Force**

5 The Cruel and Unusual Punishments Clause of the Eighth Amendment protects prisoners  
6 from the use of excessive physical force. Wilkins v. Gaddy, \_\_\_ U.S. \_\_\_, \_\_\_, 130 S.Ct. 1175,  
7 1178 (2010) (per curiam); Hudson v. McMillian, 503 U.S. 1, 8-9, 112 S.Ct. 995 (1992). What is  
8 necessary to show sufficient harm under the Eighth Amendment depends upon the claim at issue,  
9 with the objective component being contextual and responsive to contemporary standards of  
10 decency. Hudson, 503 U.S. at 8 (quotation marks and citations omitted).

11 For excessive force claims, the core judicial inquiry is whether the force was applied in a  
12 good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.  
13 Wilkins, \_\_\_ U.S. at \_\_\_, 130 S.Ct. at 1178 (quoting Hudson, 503 U.S. at 7) (quotation marks  
14 omitted). In determining whether the use of force was wanton and unnecessary, factors subject to  
15 evaluation are the extent of the prisoner's injury, the need for application of force, the relationship  
16 between that need and the amount of force used, the threat reasonably perceived by the responsible  
17 officials, and any efforts made to temper the severity of a forceful response. Hudson, 503 U.S. at  
18 7 (quotation marks and citations omitted).

19 Plaintiff has adequately alleged a use of force leading to injuries, but his amended complaint  
20 is devoid of any other factual allegations. As a result, the Court cannot determine whether or not the  
21 force used was excessive under the circumstances. Plaintiff's claim shall be dismissed, with leave  
22 to amend. Plaintiff is not required to allege extensive facts, but he must set forth sufficient facts  
23 supporting the claim that Defendant Lehman acted maliciously and sadistically to cause harm rather  
24 than to restore order. Iqbal, 129 S.Ct. at 1949-50.

25 **C. Denial of Medical Treatment**

26 A prisoner's claim of inadequate medical care does not rise to the level of an Eighth  
27 Amendment violation unless (1) "the prison official deprived the prisoner of the 'minimal civilized  
28 measure of life's necessities,'" and (2) "the prison official 'acted with deliberate indifference in

1 doing so.” Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting Hallett v. Morgan, 296  
2 F.3d 732, 744 (9th Cir. 2002) (citation omitted)). A prison official does not act in a deliberately  
3 indifferent manner unless the official “knows of and disregards an excessive risk to inmate health  
4 or safety.” Farmer v. Brennan, 511 U.S. 825, 834, 114 S.Ct. 1970 (1994). Where a prisoner is  
5 alleging a delay in receiving medical treatment, the delay must have led to further harm in order for  
6 the prisoner to make a claim of deliberate indifference to serious medical needs. McGuckin, 974  
7 F.2d at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir.  
8 1985)).

9 Plaintiff’s bare allegation that Defendants denied him medical treatment is insufficient to  
10 support an Eighth Amendment claim. There is no indication that Defendants knowingly disregarded  
11 an excessive risk of harm to Plaintiff’s health, Farmer v. Brennan, 511 U.S. at 834, or that he  
12 suffered further harm as a result of a delay in treatment, McGuckin, 974 F.2d at 1060.

#### 13 **D. Retaliation**

14 “Within the prison context, a viable claim of First Amendment retaliation entails five basic  
15 elements: (1) An assertion that a [governmental] actor took some adverse action against an inmate  
16 (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s  
17 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate  
18 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)) (quotation marks  
19 omitted); also Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009). An allegation of retaliation  
20 against a prisoner’s First Amendment right to file a prison grievance is sufficient to support a  
21 constitutional claim. Bruce v. Ylst, 351 F.3d 1283, 1288 (9th Cir. 2003).

22 As with Plaintiff’s other claims, his allegations are very conclusory. Plaintiff alleges no facts  
23 supporting a claim that Defendants retaliated against him *because of* his inmate appeals or that their  
24 actions did not advance any legitimate correctional goals. The mere possibility of misconduct is not  
25 enough to support a claim. Iqbal, 129 S.Ct. at 1949-50.

26 Indisputably, an incident occurred between Plaintiff and Defendant Lehman. Absent factual  
27 allegations to the contrary, the Court cannot conclude that the documentation of that incident in a  
28 report serves no legitimate correctional goals and instead constitutes a purely adverse, retaliatory

1 action against Plaintiff. Further, Plaintiff must allege some facts supporting a link between the filing  
2 of the grievances and the retaliatory acts.

3 **E. United States as a Party**

4 Federal officers may be held liable for damages for the violation of an inmate’s constitutional  
5 rights. Correctional Serv. Corp. v. Malesko, 534 U.S. 61, 66, 122 S.Ct. 515 (2001) (citing Bivens  
6 v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999  
7 (1971)). However, Bivens claims are only available against officers in their individual capacities.  
8 Vaccaro v. Dobre, 81 F.3d 854, 857 (9th Cir. 1996). Plaintiff may not pursue a Bivens claim against  
9 the United States, and it shall be dismissed from this action. FDIC v. Meyer, 510 U.S. 471, 486  
10 (1994); Cato v. United States, 70 F.3d 1103, 1110 (9th Cir. 1995).

11 **III. Conclusion and Order**

12 Plaintiff’s complaint fails to state any claims upon which relief may be granted. The Court  
13 will provide Plaintiff with the opportunity to file a second amended complaint curing the deficiencies  
14 identified by the Court in this order. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v.  
15 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by  
16 adding new, unrelated claims in his second amended complaint. George v. Smith, 507 F.3d 605, 607  
17 (7th Cir. 2007) (no “buckshot” complaints).

18 Plaintiff’s second amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state  
19 what each named defendant did that led to the deprivation of Plaintiff’s constitutional rights, Iqbal,  
20 129 S.Ct. at 1948-49. Although accepted as true, the “[f]actual allegations must be [sufficient] to  
21 raise a right to relief above the speculative level . . . .” Twombly, 550 U.S. at 555 (citations omitted).

22 Finally, an amended complaint supercedes the prior complaint, Forsyth v. Humana, Inc., 114  
23 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be  
24 “complete in itself without reference to the prior or superceded pleading,” Local Rule 220.  
25 Therefore, “[a]ll causes of action alleged in an original complaint which are not alleged in an  
26 amended complaint are waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand,  
27 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

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Based on the foregoing, it is HEREBY ORDERED that:

- 1. The United States is dismissed from this action, with prejudice;
- 2. Plaintiff's amended complaint, filed December 7, 2009, is dismissed for failure to state a claim upon which relief may be granted;
- 3. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 4. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a second amended complaint; and
- 5. If Plaintiff fails to file a second amended complaint in compliance with this order, this action will be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

**Dated: February 8, 2011**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE