

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CHARLES STEWART,

Plaintiff,

v.

J. TILTON, et al.,

Defendants.

CASE NO. 1:10-cv-00985-AWI-SKO PC

ORDER DISMISSING COMPLAINT, WITH  
LEAVE TO AMEND, FOR FAILURE TO  
STATE ANY CLAIMS

(Doc. 1)

THIRTY-DAY DEADLINE

**Screening Order**

**I. Screening Requirement and Standard**

Plaintiff Charles Stewart, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 3, 2010. The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an 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 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but

1 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
2 do not suffice,” Ashcroft v. Iqbal, \_\_\_ U.S. \_\_\_, \_\_\_, 129 S.Ct. 1937, 1949 (2009) (citing Bell  
3 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and courts “are not required  
4 to indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir.  
5 2009) (internal quotation marks and citation omitted). While factual allegations are accepted as true,  
6 legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

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

## 12 **II. Plaintiff’s Eighth Amendment Medical Care Claims**

### 13 **A. Summary of Allegations**

14 Plaintiff, who is currently incarcerated at the California Substance Abuse Treatment Facility  
15 (SATF) in Corcoran, brings this action against prison officials for violating his rights under the  
16 Eighth Amendment of the United States Constitution during the time he was incarcerated at SATF  
17 and at the California Correctional Institution (CCI) in Tehachapi.

18 On June 26, 2005, while at CCI, Plaintiff had a seizure and fell down a steel staircase to the  
19 concrete floor below. Plaintiff injured his shoulder, hip, and lower back. At that time, Plaintiff had  
20 a medical chrono for lower tier, lower bunk housing based on his severe seizure disorder and a hole  
21 in the right side of his head from a gunshot wound. However, Plaintiff had been moved to an upper  
22 tier on June 16, 2005.

23 After Plaintiff’s fall, he was taken to the prison’s hospital and doctors determined that he  
24 needed x-rays, an MRI, and a CT scan. Plaintiff received x-rays, which ruled out broken bones, but  
25 he never received the MRI or CT scan.

26 In May 2006, Plaintiff was transported to Mercy Hospital and diagnosed with osteomyelitis  
27 caused by a staph infection. Plaintiff alleges that he suffered from this condition because prison  
28 officials at CCI failed to treat his preexisting head injury from the gunshot. A plate was placed in

1 Plaintiff's head and he alleges that doctors at the hospital told him that simple antibiotics could have  
2 prevented the issue.

3 On February 12, 2009, Plaintiff was transferred to SATF. Plaintiff alleges that he is being  
4 denied adequate medical care and a referral to a neurologist for removal of the metal plate, which  
5 is causing a dent near his eyes. Medical staff keep informing Plaintiff that there is no money to pay  
6 for his skull surgery.

### 7 **B. Legal Standard**

8 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison  
9 conditions must involve "the wanton and unnecessary infliction of pain." Rhodes v. Chapman, 452  
10 U.S. 337, 347, 101 S.Ct. 2392 (1981). A prisoner's claim of inadequate medical care does not rise  
11 to the level of an Eighth Amendment violation unless (1) "the prison official deprived the prisoner  
12 of the 'minimal civilized measure of life's necessities,'" and (2) "the prison official 'acted with  
13 deliberate indifference in doing so.'" Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004)  
14 (quoting Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted)). A prison official  
15 does not act in a deliberately indifferent manner unless the official "knows of and disregards an  
16 excessive risk to inmate health or safety." Farmer v. Brennan, 511 U.S. 825, 834, 114 S.Ct. 1970  
17 (1994).

18 Deliberate indifference may be manifested "when prison officials deny, delay or intentionally  
19 interfere with medical treatment," or in the manner "in which prison physicians provide medical  
20 care." McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX  
21 Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). Where a prisoner is alleging  
22 a delay in receiving medical treatment, the delay must have led to further harm in order for the  
23 prisoner to make a claim of deliberate indifference to serious medical needs. McGuckin, 974 F.2d  
24 at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985)).

### 25 **C. Linkage Deficiencies**

26 "[T]he existence of an injury that a reasonable doctor would find important and worthy of  
27 comment or treatment, . . . the presence of a medical condition that significantly affects an  
28 individual's daily activities, and . . . the existence of chronic or substantial pain" are indications of

1 a serious medical need. Doty v. County of Lassen, 37 F.3d 540, 546 n.3 (9th Cir. 1994) (citing  
2 McGuckin v. Smith, 974 F.2d 1050, 1059-1060 (9th Cir. 1992), overruled on other grounds, WMX  
3 Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc)); Lopez v. Smith, 203 F.3d  
4 1122, 1131 (9th Cir. 2000). Plaintiff's allegations suggest that he had serious medical needs.  
5 However, Plaintiff has not linked any of the named defendants to actions or omissions that support  
6 his claims of deliberate indifference to his medical needs.

7 Plaintiff names California Department of Corrections and Rehabilitation Secretary J. Tilton,  
8 SATF Warden Kathleen Allison, Chief Healthcare Officer Enenmoh, and a Doe Chief Healthcare  
9 Officer as defendants. It does not appear that any of those prison officials were personally involved  
10 in Plaintiff's medical care. Iqbal, 129 S.Ct. at 1948-49; Simmons v. Navajo County, Ariz., 609 F.3d  
11 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);  
12 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Liability may not be imposed on supervisory  
13 or administrative personnel under the theory of respondeat superior, as each defendant is only liable  
14 for his or her own misconduct. Iqbal, 129 S.Ct. at 1948-49; Ewing, 588 F.3d at 1235. Supervisors  
15 or administrators may only be held liable if they "participated in or directed the violations, or knew  
16 of the violations and failed to act to prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.  
17 1989); accord Starr v. Baca, 633 F.3d 1191, 1196-97 (9th Cir. 2011); Corales v. Bennett, 567 F.3d  
18 554, 570 (9th Cir. 2009); Preschooler II v. Clark County School Board of Trustees, 479 F.3d 1175,  
19 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997).

20 The existence of a policy that directly led to the violation of Plaintiff's rights may provide  
21 a basis for the imposition of liability on those who created, enacted, or enforced the policy, Starr, 633  
22 F.3d at 1194-97; Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989), and treatment decisions based  
23 on budgetary concerns do not shield prison officials from liability for deliberate indifference, Jones  
24 v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986). However, Plaintiff's very conclusory allegation that  
25 staff at SATF denied him medical care based on the orders and policies of Defendants Allison and  
26 Enenmoh falls well short of the specificity needed to state a plausible claim against Allison and  
27 Enenmoh for violating Plaintiff's Eighth Amendment rights. Iqbal, 129 S.Ct. at 1949-50; Moss, 572  
28 F.3d at 969.

Further, there is no linkage at all between any named defendants and the alleged failure to provide appropriate medical care to Plaintiff at CCI. Plaintiff will be provided with the opportunity to file an amended complaint curing the deficiencies identified in this order, subject to the following restriction.

**D. Rule 18**

Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed. R. Civ. P. 18(a); George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007); see also Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011) (unrelated claims against different defendants belong in separate suits and complaints violating that principle should be rejected). In this instance, Plaintiff appears to be raising three separate claims. The failure to treat Plaintiff's gunshot wound, the failure to honor Plaintiff's upper tier chrono, and the failure to provide Plaintiff with medical treatment for his current problems involving the plate in his head do not appear to be related such that they are appropriately litigated in the same action.

For the reasons set forth in the preceding subsection, Plaintiff's complaint fails to state any claims under section 1983 and his complaint shall be dismissed with leave to amend. Plaintiff must determine which claim he wants to litigate in this action and he should set forth that claim in his amended complaint. If Plaintiff re-alleges all three claims but fails to satisfy Rule 18, the Court will determine which claim will proceed and it will dismiss the unrelated claims.

**III. Conclusion and Order**

Plaintiff's complaint fails to state any claims upon which relief may be granted under section 1983. The Court will provide Plaintiff with the opportunity to file an amended complaint curing the deficiencies identified by the Court in this order. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what each named defendant did that led to the deprivation of Plaintiff's constitutional rights, Iqbal, 129

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1 S.Ct. at 1948-49. Although accepted as true, the “[f]actual allegations must be [sufficient] to raise  
2 a right to relief above the speculative level. . . .” Twombly, 550 U.S. at 555 (citations omitted).

3 Finally, an amended complaint supercedes the prior complaint, Forsyth v. Humana, Inc., 114  
4 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and it must be  
5 “complete in itself without reference to the prior or superceded pleading,” Local Rule 220.  
6 Therefore, “[a]ll causes of action alleged in an original complaint which are not alleged in an  
7 amended complaint are waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand,  
8 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

9 Based on the foregoing, it is HEREBY ORDERED that:

- 10 1. The Clerk’s Office shall send Plaintiff a complaint form;
- 11 2. Plaintiff’s complaint, filed June 3, 2010, is dismissed for failure to state any claims  
12 upon which relief may be granted;
- 13 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
14 amended complaint; and
- 15 4. If Plaintiff fails to file an amended complaint in compliance with this order, this  
16 action will be dismissed, with prejudice, for failure to state a claim.

17  
18 IT IS SO ORDERED.

19 **Dated: May 18, 2011**

**/s/ Sheila K. Oberto**  
**UNITED STATES MAGISTRATE JUDGE**