

1 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
2 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §
3 1915(e)(2)(B)(ii).

4 A complaint must contain “a short and plain statement of the claim showing that the
5 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
6 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
7 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing
8 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
9 matter, accepted as true, to ‘state a claim that is plausible on its face.’” *Id.* (quoting *Twombly*,
10 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are not. *Id.*

11 **II. Summary of Complaint**

12 Plaintiff complains of actions which occurred at Bakersfield Mercy¹ Hospital. Plaintiff
13 names as Defendants Mercy Hospital Bakersfield and Staff, and Doe 1, superintendent of
14 nursing.

15 Plaintiff alleges the following. Mercy Hospital is contracted with the state to provide
16 medical care. On March 3, 2009, Plaintiff was transferred to Mercy Hospital for respiratory
17 problems, and entered a coma for over three weeks. During that time, nurses or CNA’s were
18 supposed to turn Plaintiff every two hours to prevent bed sores.

19 Plaintiff developed a stage 4 bedsore because of their neglect, along with nerve damage.
20 One month later, a wound nurse removed Plaintiff’s dead skin surrounding the bed sore. This
21 was done in unsanitary conditions, and resulted in a staph infection. Plaintiff later became
22 infected with staph infection after a procedure was done a few weeks later. After several weeks
23 of trying to bring Plaintiff’s condition under control, the defendants eventually transferred
24 Plaintiff to a hospital in San Diego. There, doctors operated on Plaintiff’s bed sore.

25 Plaintiff seeks as relief monetary damages, and for Defendants to pay for all current and
26 future medical expenses as a result of Plaintiff’s injuries.

28 ¹ Plaintiff misspells the Hospital’s name as “Mearcy.”

1 **III. Analysis**

2 The Eighth Amendment prohibits cruel and unusual punishment. “The Constitution does
3 not mandate comfortable prisons.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quotation and
4 citation omitted). A prisoner’s claim of inadequate medical care does not rise to the level of an
5 Eighth Amendment violation unless (1) “the prison official deprived the prisoner of the ‘minimal
6 civilized measure of life’s necessities,’” and (2) “the prison official ‘acted with deliberate
7 indifference in doing so.’” *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting
8 *Hallett v. Morgan*, 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted)). The deliberate
9 indifference standard involves an objective and a subjective prong. First, the alleged deprivation
10 must be, in objective terms, “sufficiently serious” *Farmer*, 511 U.S. at 834 (citing *Wilson v.*
11 *Seiter*, 501 U.S. 294, 298 (1991)). Second, the prison official must “know[] of and disregard[]
12 an excessive risk to inmate health or safety” *Id.* at 837.

13 “Deliberate indifference is a high legal standard.” *Toguchi*, 391 F.3d at 1060. “Under
14 this standard, the prison official must not only ‘be aware of the facts from which the inference
15 could be drawn that a substantial risk of serious harm exists,’ but that person ‘must also draw the
16 inference.’” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “‘If a prison official should have
17 been aware of the risk, but was not, then the official has not violated the Eighth Amendment, no
18 matter how severe the risk.’” *Id.* (quoting *Gibson v. County of Washoe, Nevada*, 290 F.3d 1175,
19 1188 (9th Cir. 2002)).²

20 Plaintiff fails to state a claim. Plaintiff alleges that neglect on the part of nurses at Mercy
21 Hospital led to Plaintiff developing a bedsore. Plaintiff alleges at most negligence, which is not
22 sufficient for an Eighth Amendment claim. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Plaintiff
23 has not alleged sufficient facts to demonstrate that Defendants knew of and disregarded an
24 excessive risk to Plaintiff’s health. *Farmer*, 511 U.S. at 834, 837.

25 Plaintiff also alleges that he developed a staph infection because a wound nurse removed
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27 ² Mercy Hospital is not a prison official. However, the Court will assume that Mercy Hospital acts under
28 color of state law, as Plaintiff alleges that Mercy Hospital is contracted with the state to provide medical care for
inmates.

1 dead skin from the bed sore in unsanitary conditions. This, too, is at most an allegation of
2 negligence, and fails to state a claim.

3 While the nurses of Mercy Hospital is made up of numerous individuals, Plaintiff cannot
4 sue them as a group. Section 1983 requires a Plaintiff to show that (1) each defendant acted
5 under color of state law and (2) each defendant deprived him of rights secured by the
6 Constitution or federal law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir.
7 2006). Plaintiff must demonstrate that each defendant personally participated in the deprivation
8 of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

9 **IV. Conclusion And Order**

10 Plaintiff fails to state any cognizable claims against any Defendants. The Court will
11 provide Plaintiff with an opportunity to file a first amended complaint curing the deficiencies
12 identified by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987).
13 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended
14 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

15 If Plaintiff decides to amend, Plaintiff’s amended complaint should be brief, Fed. R. Civ.
16 P. 8(a), but must state what each named defendant did that led to the deprivation of Plaintiff’s
17 constitutional or other federal rights. *Iqbal*, 129 S. Ct. at 1949. Although accepted as true, the
18 “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level . . .
19 .” *Twombly*, 550 U.S. at 555.

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

27 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

28 1. The Clerk’s Office shall send Plaintiff a complaint form;

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2. Plaintiff's complaint is dismissed for failure to state a claim, with leave to file a first amended complaint within **thirty (30) days** from the date of service of this order; and

3. If Plaintiff fails to comply with this order, the Court will recommend dismissal of this action for failure to obey a court order and failure to state a claim.

IT IS SO ORDERED.

Dated: March 18, 2011

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE