

1 **II. SCREENING REQUIREMENTS**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
5 raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which
6 relief may be granted, or that seek monetary relief from a defendant who is immune from
7 such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion
8 thereof, that may have been paid, the court shall dismiss the case at any time if the court
9 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
10 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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13 A complaint must contain “a short and plain statement of the claim showing that the
14 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
15 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
16 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
17 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
18 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
19 face.’” Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual
20 allegations are accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

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22 **III. SUMMARY OF COMPLAINT**

23 Plaintiff brings this action for inadequate medical care in violation of the Eighth
24 Amendment. Plaintiff names the following individuals as Defendants: Jayanta Choudhury,
25 M.D. and Community Regional Medical Center.
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1 Plaintiff alleges as follows: On October 27, 2008, Plaintiff had a colonoscopy
2 performed by Defendant Choudhury at Fresno Community Hospital. Unbeknownst to
3 anyone, during the procedure, Plaintiff's intestinal organs were lacerated. After the
4 procedure, Plaintiff returned to prison and became very ill, suffering severe pain, and
5 throwing up. Plaintiff was taken back to the hospital. Defendant Choudhury said everything
6 was fine and sent Plaintiff back to the prison. The following day Plaintiff was again taken
7 back to the hospital where he received a blood transfusion, and another colonoscopy which
8 discovered that his intestines had been lacerated during the first procedure. Plaintiff went
9 into surgery to repair the damage. Two permanent clamps were used to stop the bleeding.
10 Plaintiff was also given another blood transfusion from which he contracted Hepatitis C.
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12 Plaintiff seeks compensatory damages.

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14 **IV. ANALYSIS**

15 The Civil Rights Act under which this action was filed provides:

16 Every person who, under color of [state law] . . . subjects, or
17 causes to be subjected, any citizen of the United States . . . to
18 the deprivation of any rights, privileges, or immunities secured
19 by the Constitution . . . shall be liable to the party injured in an
20 action at law, suit in equity, or other proper proceeding for
21 redress.

22 42 U.S.C. § 1983. "Section 1983 . . . creates a cause of action for violations of the federal
23 Constitution and laws." Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir.
24 1997) (internal quotations omitted).

25 **A. Eighth Amendment Claims**

26 Plaintiff alleges that Defendant Choudhury failed to provide adequate medical care
27 in violation of the Eighth Amendment.

1 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
2 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439
3 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). The
4 two part test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical
5 need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further
6 significant injury or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s
7 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting
8 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds,
9 WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc) (internal quotations
10 omitted)). Deliberate indifference is shown by “a purposeful act or failure to respond to a
11 prisoner’s pain or possible medical need, and harm caused by the indifference.” Jett, 439
12 F.3d at 1096 (citing McGuckin, 974 F.2d at 1060). In order to state a claim for violation of
13 the Eighth Amendment, a plaintiff must allege sufficient facts to support a claim that the
14 named defendants “[knew] of and disregard[ed] an excessive risk to [Plaintiff’s] health . .
15 . .” Farmer v. Brennan, 511 U.S. 825, 837 (1994).

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18 In applying this standard, the Ninth Circuit has held that before it can be said that
19 a prisoner’s civil rights have been abridged, “the indifference to his medical needs must be
20 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this
21 cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980)
22 (citing Estelle, 429 U.S. at 105-06). “[A] complaint that a physician has been negligent in
23 diagnosing or treating a medical condition does not state a valid claim of medical
24 mistreatment under the Eighth Amendment. Medical malpractice does not become a
25 constitutional violation merely because the victim is a prisoner.” Estelle, 429 U.S. at 106;
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1 see also Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995); McGuckin, 974
2 F.2d at 1050, overruled on other grounds, WMX, 104 F.3d at 1136. Even gross negligence
3 is insufficient to establish deliberate indifference to serious medical needs. See Wood v.
4 Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

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6 Also, “a difference of opinion between a prisoner-patient and prison medical
7 authorities regarding treatment does not give rise to a § 1983 claim.” Franklin v. Oregon,
8 662 F.2d 1337, 1344 (9th Cir. 1981) (internal citation omitted). To prevail, Plaintiff “must
9 show that the course of treatment the doctors chose was medically unacceptable under
10 the circumstances . . . and . . . that they chose this course in conscious disregard of an
11 excessive risk to plaintiff’s health.” Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)
12 (internal citations omitted). A prisoner’s mere disagreement with diagnosis or treatment
13 does not support a claim of deliberate indifference. Sanchez v. Vild, 891 F.2d 240, 242
14 (9th Cir. 1989).

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16 Plaintiff alleges that he had a routine colonoscopy during which his intestines were
17 lacerated, was returned to the prison, became ill and suffered severe pain, came back to
18 the hospital only to be turned away again, and finally had another surgery to repair the
19 damage caused by the first surgery.

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21 As currently pleaded, Plaintiff has failed to allege facts sufficient to show deliberate
22 indifference to a serious medical need. As currently stated Plaintiff appears to be alleging
23 negligence or perhaps medical malpractice neither of which support a claim under Section
24 1983. The Court will grant Plaintiff leave to amend this claim and attempt to set forth
25 sufficient facts to state such a claim.

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27 **B. State Law Claims**

1 Plaintiff appears to be alleging that Defendant Choudhury committed medical
2 malpractice, which is a state law claim.

3 To establish medical negligence (malpractice), a plaintiff must state (and
4 subsequently prove) all of the following: (1) that the defendant was negligent; (2) that the
5 plaintiff was harmed; and (3) that the defendant's negligence was a substantial factor in
6 causing the plaintiff's harm. Ladd v. County of San Mateo, 12 Cal.4th 913, 917 (1996);
7 Ann M. v. Pacific Plaza Shopping Center, 6 Cal.4th 666, 673 (1993); Restatement Second
8 of Torts, section 328A; and Judicial Council Of California Civil Jury Instruction 400,
9 Summer 2008 Supplement Instruction.

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11 Medical professionals are negligent if they fail to use the level of skill, knowledge,
12 and care in diagnosis and treatment that other reasonably careful medical professionals
13 would use in the same or similar circumstances. This level of skill, knowledge, and care
14 is sometimes referred to as "the standard of care." Landeros v. Flood, 17 Cal.3d 399, 408
15 (1976); see also Brown v. Colm, 11 Cal.3d 639, 642–643 (1974); Mann v. Cracchiolo, 38
16 Cal.3d 18, 36 (1985); and Judicial Council Of California Civil Jury Instruction 500, Summer
17 2008 Supplement Instruction. "[M]edical personnel are held in both diagnosis and
18 treatment to the degree of knowledge and skill ordinarily possessed and exercised by
19 members of their profession in similar circumstances." Hutchinson v. United States, 838
20 F.2d 390, 392-93 (9th Cir. 1988) (internal citations omitted).

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22 The Court does not reach the viability of Plaintiff's state law as it will not exercise
23 supplemental jurisdiction over state law claims unless Plaintiff is able to state a cognizable
24 federal claim. 28 U.S.C. § 1367(a); Herman Family Revocable Trust v. Teddy Bear, 254
25 F.3d 802, 805 (9th Cir. 2001).
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1 The Court also notes that if Plaintiff does state a cognizable Eighth Amendment
2 claim and pursues the medical malpractice claim, he must demonstrate compliance with
3 the California Tort Claims Act. Under the California Tort Claims Act (“CTCA”), a plaintiff
4 may not maintain an action for damages against a public employee unless he has
5 presented a written claim to the state Victim Compensation and Government Claims Board
6 within six months of accrual of the action. See Cal. Gov’t Code §§ 905, 911.2(a), 945.4
7 & 950.2; Mangold v. California Pub. Utils. Comm’n, 67 F.3d 1470, 1477 (9th Cir. 1995).
8 A plaintiff may file a written application for leave to file a late claim up to one year after the
9 cause of action accrues. Cal. Gov’t Code § 911.4. The purpose of CTCA’s presentation
10 requirement is “to provide the public entity sufficient information to enable it to adequately
11 investigate claims and to settle them, if appropriate, without the expense of litigation.” City
12 of San Jose v. Superior Court, 525 P.2d 701, 706 (1974). Thus, in pleading a state law
13 claim, plaintiff must allege facts demonstrating that he has complied with CTCA’s
14 presentation requirement. State of California v. Superior Court (Bodde), 90 P.3d 116, 119
15 (2004). Failure to demonstrate compliance constitutes a failure to state a cause of action
16 and will result in the dismissal of plaintiff’s state law claims. Id.

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20 The Court will allow Plaintiff one opportunity to amend his complaint. If he chooses
21 to do so, Plaintiff must demonstrate compliance with the CTCA.

22 **C. Linkage**

23 Plaintiff names Community Regional Medical Center as a Defendant but does not
24 attribute action or inaction to it. In fact, Community Regional Medical Center is not
25 mentioned at all in Plaintiff’s statement of claim. Plaintiff could be arguing that Defendant
26 Community Regional Medical Center is somehow supervisorily responsible for Defendant
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1 Choudhury's actions.

2 Under Section 1983, Plaintiff must demonstrate that each named Defendant
3 personally participated in the deprivation of his rights. *Jones v. Williams*, 297 F.3d 930,
4 934 (9th Cir. 2002). The Supreme Court has emphasized that the term "supervisory
5 liability," loosely and commonly used by both courts and litigants alike, is a misnomer.
6 *Iqbal*, 129 S.Ct. at 1949. "Government officials may not be held liable for the
7 unconstitutional conduct of their subordinates under a theory of respondeat superior." *Id.*
8 at 1948. Rather, each government official, regardless of his or her title, is only liable for
9 his or her own misconduct, and therefore, Plaintiff must demonstrate that each defendant,
10 through his or her own individual actions, violated Plaintiff's constitutional rights. *Id.* at
11 1948-49.
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14 When examining the issue of supervisor liability, it is clear that the supervisors are
15 not subject to vicarious liability, but are liable only for their own conduct. *Jeffers v. Gomez*,
16 267 F.3d 895, 915 (9th Cir. 2001); *Wesley v. Davis*, 333 F.Supp.2d 888, 892 (C.D.Cal.
17 2004). In order to establish liability against a supervisor, a plaintiff must allege facts
18 demonstrating (1) personal involvement in the constitutional deprivation, or (2) a sufficient
19 causal connection between the supervisor's wrongful conduct and the constitutional
20 violation. *Jeffers*, 267 F.3d at 915; *Wesley*, 333 F.Supp.2d at 892. The sufficient causal
21 connection may be shown by evidence that the supervisor implemented a policy so
22 deficient that the policy itself is a repudiation of constitutional rights. *Wesley*, 333
23 F.Supp.2d at 892 (internal quotations omitted). However, an individual's general
24 responsibility for supervising the operations of a prison is insufficient to establish personal
25 involvement. *Id.* (internal quotations omitted).
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1 Supervisor liability under Section 1983 is a form of direct liability. *Munoz v.*
2 *Kolender*, 208 F.Supp.2d 1125, 1149 (S.D.Cal. 2002). Under direct liability, Plaintiff must
3 show that Defendant breached a duty to him which was the proximate cause of his injury.
4 *Id.* “The requisite causal connection can be established . . . by setting in motion a series
5 of acts by others which the actor knows or reasonably should know would cause others to
6 inflict the constitutional injury.” *Id.* (quoting *Johnson v. Duffy*, 588 F.2d 740, 743-744 (9th
7 Cir. 1978)).

9 Plaintiff has not alleged facts demonstrating that Defendant Community Regional
10 Medical Center personally acted to violate his rights. In his Amended Complaint, Plaintiff
11 needs to specifically link each Defendant to a violation of his rights. Plaintiff shall be given
12 the opportunity to file an amended complaint curing the deficiencies in this respect.

14 **V. CONCLUSION AND ORDER**

15 The Court finds that Plaintiff’s Complaint fails to state any Section 1983 claims upon
16 which relief may be granted. The Court will provide Plaintiff time to file an amended
17 complaint to address the potentially correctable deficiencies noted above. See *Noll v.*
18 *Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). In his Amended Complaint, Plaintiff must
19 demonstrate that the alleged incident or incidents resulted in a deprivation of his
20 constitutional rights. *Iqbal*, 129 S.Ct. at 1948-49. Plaintiff must set forth “sufficient factual
21 matter . . . to ‘state a claim that is plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting
22 *Twombly*, 550 U.S. at 555). Plaintiff must also demonstrate that each defendant personally
23 participated in the deprivation of his rights. *Jones*, 297 F.3d at 934.

25 Plaintiff should note that although he has been given the opportunity to amend, it
26 is not for the purposes of adding new defendants or claims. Plaintiff should focus the
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1 amended complaint on claims and defendants relating solely to the issues discussed
2 herein.

3 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint
4 be complete in itself without reference to any prior pleading. As a general rule, an
5 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,
6 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no longer
7 serves any function in the case. Therefore, in an amended complaint, as in an original
8 complaint, each claim and the involvement of each defendant must be sufficiently alleged.
9 The amended complaint should be clearly and boldly titled "First Amended Complaint,"
10 refer to the appropriate case number, and be an original signed under penalty of perjury.
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12 Based on the foregoing, it is HEREBY ORDERED that:

- 13 1. Plaintiff's Complaint is dismissed for failure to state a claim, with leave to file
14 an amended complaint within thirty (30) days from the date of service of this
15 order;
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- 17 2. Plaintiff shall caption the amended complaint "First Amended Complaint" and
18 refer to the case number 1:10-cv-2063-GBC (PC); and
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- 20 3. If Plaintiff fails to comply with this order, this action will be dismissed for
21 failure to state a claim upon which relief may be granted.

22 IT IS SO ORDERED.

23 Dated: June 23, 2011

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25 UNITED STATES MAGISTRATE JUDGE
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