

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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12 A complaint must contain “a short and plain statement of the claim showing that the
13 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
14 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
15 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
16 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
17 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
18 face.’” Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual
19 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 being subjected to cruel and unusual punishment and
24 failure to protect, both in violation of the Eighth Amendment. Plaintiff names the following
25 individuals as Defendants: Kathleen Allison, Warden; Akin, Lieutenant; K. Santoro,
26 Associate Warden; P. Denny, Facility Captain; R. Hall, Appeals Coordinator; R. Gomez,
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1 Appeals Coordinator; and L. Ginani, AGPA Appeals Coordinator.

2 Plaintiff alleges as follows: On October 13, 2010 at 3:00 a.m., Plaintiff's mattress
3 slipped off his top bunk bed, causing Plaintiff to fall to the floor, which injured his back,
4 neck, and head. Plaintiff continues to be in pain from the injuries he received in the fall
5 and has nightmares about the fall or falling again. Plaintiff requested a permanent lower
6 bunk chrono. On an unspecified date, Plaintiff fell from the top bunk bed again, injuring
7 himself.
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9 Plaintiff seeks compensatory and punitive damages, and attorney fees and costs.

10 **IV. ANALYSIS**

11 The Civil Rights Act under which this action was filed provides:
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13 Every person who, under color of [state law] . . . subjects, or
14 causes to be subjected, any citizen of the United States . . . to
15 the deprivation of any rights, privileges, or immunities secured
16 by the Constitution . . . shall be liable to the party injured in an
17 action at law, suit in equity, or other proper proceeding for
18 redress.

19 42 U.S.C. § 1983. "Section 1983 . . . creates a cause of action for violations of the federal
20 Constitution and laws." Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir.
21 1997) (internal quotations omitted).

22 **A. Eighth Amendment**

23 Plaintiff alleges that Defendants have subjected to him to cruel and unusual
24 punishment by making him sleep on unsafe bunk beds. Plaintiff alleges that Defendants
25 have put the bunk beds together wrong, so that there is nothing to keep the top mattress
26 from sliding off. Plaintiff further alleges that Defendants have failed to protect him from
27 accidents, i. e. falling off of his top bunk.

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1 1. Cruel and Unusual

2 The Eighth Amendment’s prohibition of cruel and unusual punishment requires that
3 prison officials take reasonable measures for the safety of inmates. See Farmer v.
4 Brennan, 511 U.S. 825, 834 (1994). A prison official violates the Eighth Amendment only
5 when two requirements are met: (1) the deprivation alleged is, objectively, sufficiently
6 serious, and (2) the official is, subjectively, deliberately indifferent to the inmate’s safety.
7 See id. “[O]nly those deprivations denying ‘the minimal civilized measure of life’s
8 necessities,’ are sufficiently grave to form the basis of an Eighth Amendment violation.”
9 Wilson v. Seiter, 501 U.S. 294, 298 (1991) (internal citation omitted).

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11 Deliberate indifference is shown by “a purposeful act or failure to respond to a
12 prisoner’s pain or possible medical need,” and “harm caused by the indifference.” Jett v.
13 Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing McGuckin v. Smith, 974 F.2d 1050,
14 1060 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d
15 1133 (9th Cir. 1997) (en banc)). “Deliberate indifference is a high legal standard.” Toguchi
16 v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). “Under this standard, the prison official
17 must not only ‘be aware of the facts from which the inference could be drawn that a
18 substantial risk of serious harm exists,’ but that person ‘must also draw the inference.’” Id.
19 at 1057 (quoting Farmer, 511 U.S. at 837). “If a [prison official] should have been aware
20 of the risk, but was not, then the [official] has not violated the Eighth Amendment, no
21 matter how severe the risk.” Id. (quoting Gibson v. County of Washoe, Nevada, 290 F.3d
22 1175, 1188 (9th Cir. 2002)).

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25 Plaintiff does not allege that any of the named Defendants are personally
26 responsible for the safety conditions of the bunk beds. He merely states that the bunk
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1 beds are not safe. He does not allege that any of the Defendants had knowledge of the
2 alleged substantial risk to Plaintiff's safety from the bunk beds. He does not allege that any
3 of the Defendants were deliberately indifferent to this risk. And, finally, he does not
4 demonstrate that the mattress slipping off of the top bunk creates a substantial risk of harm
5 to him.
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7 Thus, Plaintiff's claim is dismissed. Plaintiff will be given one additional opportunity
8 to amend this claim. However, he should keep the following case law in mind upon
9 amendment. See Daugherty v. Hense, 2009 WL 3817506, *2 (E.D.Cal. Nov. 13, 2009)
10 ("a lack of a guard rail or safety bar to prevent Plaintiff from rolling and falling out of his bed
11 is not grave enough to form the basis of a viable Eighth Amendment claim"); Patton v.
12 Doran, 2005 WL 2334367, *2 (M.D.Pa. Sep. 20, 2005) ("However, even if the Court were
13 to 'infer' personal involvement, as suggested by plaintiff, the claim would still be subject to
14 dismissal. Failing to install safety rails on an upper bunk of a set of bunk beds that is to
15 be exclusively utilized by adults does not constitute a condition which would pose an
16 unreasonable risk of future injury.")
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18 2. Failure to Protect

19 Plaintiff contends that Defendants violated his Eighth Amendment by failing to
20 protect him from the dangers of his top bunk bed.
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22 "[A] prison official may be held liable under the Eighth Amendment for denying
23 humane conditions of confinement only if he knows that inmates face a substantial risk of
24 serious harm and disregards that risk by failing to take reasonable measures to abate it."
25 Farmer v. Brennan, 511 U.S. 825, 847 (1994). Prison officials are required to take
26 reasonable measures to guarantee the safety of inmates and officials have a duty to
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1 protect prisoners from violence at the hands of other prisoners. Farmer, 511 U.S. at
2 832-33; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). An inmate has no
3 constitutional right, however, to enjoy a particular security classification or housing. See
4 Meachum v. Fano, 427 U.S. 215, 224-25 (1976) (no liberty interest protected by the Due
5 Process Clause is implicated in a prison's reclassification and transfer decisions); see also
6 Myron v. Terhune, 476 F.3d 716, 718 (9th Cir. 2007).

8 Rather, to state a claim for threats to safety, an inmate must allege facts to support
9 that he was incarcerated under conditions posing a substantial risk of harm and that prison
10 officials were "deliberately indifferent" to those risks. Farmer, 511 U.S. at 834; Frost, 152
11 F.3d at 1128; Redman v. County of Los Angeles, 942 F.2d 1435, 1443 (9th Cir. 1991) (en
12 banc). To adequately allege deliberate indifference, a plaintiff must set forth facts to
13 support that a defendant knew of, but disregarded, an excessive risk to inmate safety.
14 Farmer, 511 U.S. at 837. That is, "the official must both [have been] aware of facts from
15 which the inference could be drawn that a substantial risk of serious harm exist[ed], and
16 he must also [have] draw[n] the inference." Farmer, 511 U.S. at 837; Frost, 152 F.3d at
17 1128; Redman, 942 F.2d at 1442.

19 Plaintiff fails to sufficiently state a claim for failure to protect under the Eighth
20 Amendment. Again, Plaintiff fails to attribute responsibility to any of the named
21 Defendants. Plaintiff does not state that any of the Defendants had knowledge of the risk
22 or that they were deliberately indifferent to that risk. Furthermore, Plaintiff does not
23 demonstrate that a substantial risk of harm existed. As stated above, Plaintiff's claim that
24 not having a "lip" on the outer edge of the top bunk bed to keep the mattress in place, does
25 not pose an unreasonable risk of injury.
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1 **B. Personal Participation and Supervisory Liability**

2 Plaintiff does not include any of the named Defendants in the statement of the case.

3 Plaintiff could be arguing that some of these Defendants are liable for the conduct of his
4 or her subordinates as they were not present and did not participate in the complained of
5 conduct as currently described by Plaintiff.
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7 Under Section 1983, Plaintiff must demonstrate that each named Defendant
8 personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930,
9 934 (9th Cir. 2002). The Supreme Court has emphasized that the term “supervisory
10 liability,” loosely and commonly used by both courts and litigants alike, is a misnomer.
11 Iqbal, 129 S.Ct. at 1949. “Government officials may not be held liable for the
12 unconstitutional conduct of their subordinates under a theory of respondeat superior.” Id.
13 at 1948. Rather, each government official, regardless of his or her title, is only liable for
14 his or her own misconduct, and therefore, Plaintiff must demonstrate that each defendant,
15 through his or her own individual actions, violated Plaintiff’s constitutional rights. Id. at
16 1948-49.
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18 When examining the issue of supervisor liability, it is clear that the supervisors are
19 not subject to vicarious liability, but are liable only for their own conduct. Jeffers v. Gomez,
20 267 F.3d 895, 915 (9th Cir. 2001); Wesley v. Davis, 333 F.Supp.2d 888, 892 (C.D.Cal.
21 2004). In order to establish liability against a supervisor, a plaintiff must allege facts
22 demonstrating (1) personal involvement in the constitutional deprivation, or (2) a sufficient
23 causal connection between the supervisor’s wrongful conduct and the constitutional
24 violation. Jeffers, 267 F.3d at 915; Wesley, 333 F.Supp.2d at 892. The sufficient causal
25 connection may be shown by evidence that the supervisor implemented a policy so
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1 deficient that the policy itself is a repudiation of constitutional rights. Wesley, 333
2 F.Supp.2d at 892 (internal quotations omitted). However, an individual’s general
3 responsibility for supervising the operations of a prison is insufficient to establish personal
4 involvement. Id. (internal quotations omitted).

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6 Supervisor liability under Section 1983 is a form of direct liability. Munoz v.
7 Kolender, 208 F.Supp.2d 1125, 1149 (S.D.Cal. 2002). Under direct liability, Plaintiff must
8 show that Defendant breached a duty to him which was the proximate cause of his injury.
9 Id. “The requisite causal connection can be established . . . by setting in motion a series
10 of acts by others which the actor knows or reasonably should know would cause others to
11 inflict the constitutional injury.” Id. (quoting Johnson v. Duffy, 588 F.2d 740, 743-744 (9th
12 Cir. 1978)). However, “where the applicable constitutional standard is deliberate
13 indifference, a plaintiff may state a claim for supervisory liability based upon the
14 supervisor’s knowledge of and acquiescence in unconstitutional conduct by others.” Star
15 v. Baca, ___ F.3d ___, 2011 WL 477094, *4 (9th Cir. Feb. 11, 2011).

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17 Plaintiff has not alleged facts demonstrating that any of the named Defendants
18 personally acted to violate his rights. Plaintiff needs to specifically link each Defendant to
19 a violation of his rights. Plaintiff shall be given one opportunity to file an amended
20 complaint curing the deficiencies in this respect.

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22 **V. CONCLUSION AND ORDER**

23 The Court finds that Plaintiff’s First Amended Complaint fails to state any Section
24 1983 claims upon which relief may be granted. The Court will provide Plaintiff time to file
25 an amended complaint to address the potentially correctable deficiencies noted above.
26 See Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). In his Amended Complaint,
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1 Plaintiff must demonstrate that the alleged incident or incidents resulted in a deprivation
2 of his constitutional rights. Iqbal, 129 S.Ct. at 1948-49. Plaintiff must set forth “sufficient
3 factual matter . . . to ‘state a claim that is plausible on its face.’” Iqbal, 129 S.Ct. at 1949
4 (quoting Twombly, 550 U.S. at 555). Plaintiff must also demonstrate that each defendant
5 personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930,
6 934 (9th Cir. 2002).

8 Plaintiff should note that although he has been given the opportunity to amend, it
9 is not for the purposes of adding new defendants or claims. Plaintiff should focus the
10 amended complaint on claims and defendants relating solely to issues arising out of the
11 issues described herein.

13 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint
14 be complete in itself without reference to any prior pleading. As a general rule, an
15 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,
16 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no longer
17 serves any function in the case. Therefore, in an amended complaint, as in an original
18 complaint, each claim and the involvement of each defendant must be sufficiently alleged.
19 The amended complaint should be clearly and boldly titled “Second Amended Complaint,”
20 refer to the appropriate case number, and be an original signed under penalty of perjury.

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

- 23 1. Plaintiff’s complaint is dismissed for failure to state a claim, with leave to file
24 an amended complaint within thirty (30) days from the date of service of this
25 order;
- 26 2. Plaintiff shall caption the amended complaint “Second Amended Complaint”
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1 and refer to the case number 1:11-cv-67-GBC (PC); and

2 3. If Plaintiff fails to comply with this order, this action will be dismissed for
3 failure to state a claim upon which relief may be granted.

4 IT IS SO ORDERED.

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6 Dated: May 11, 2011


7 UNITED STATES MAGISTRATE JUDGE

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