

1	UNITED STATES DISTRICT COURT
2	EASTERN DISTRICT OF CALIFORNIA
3	
4	
5	
6	JEREMY HOLLIS,
7	Plaintiff,
8	
9	v.
10	ENENMOH, et al.,
11	Defendants.
12	CASE NO. 1:11-cv-01154-MJS
13	ORDER DISMISSING FIRST AMENDED
14	COMPLAINT WITH LEAVE TO AMEND
15	(ECF NO. 9)
16	AMENDED COMPLAINT DUE WITHIN
17	THIRTY (30) DAYS
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

## SCREENING ORDER

### I. PROCEDURAL HISTORY

Plaintiff Jeremy Hollis is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. He has consented to Magistrate Judge jurisdiction. (ECF No. 5.)

On July 31, 2012, Plaintiff's Complaint was screened and dismissed, with leave to amend, for failure to state a cognizable claim. (ECF No. 6.) Plaintiff's First Amended Complaint (ECF No. 9) is now before the Court for screening.

### II. SCREENING REQUIREMENT

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, malicious," or that fail to state a claim upon which

1 relief may be granted, or that seek monetary relief from a defendant who is immune from  
2 such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion  
3 thereof, that may have been paid, the court shall dismiss the case at any time if the court  
4 determines that . . . the action or appeal . . . fails to state a claim upon which relief may  
5 be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

7 The First Amended Complaint identifies at least eight prison officials as  
8 Defendants and broadly alleges numerous instances of inadequate medical care and  
9 other violations of Plaintiff’s rights. (ECF No. 9.)

10 **IV. ANALYSIS**

11 **A. Section 1983**

12 Section 1983 “provides a cause of action for the ‘deprivation of any rights,  
13 privileges, or immunities secured by the Constitution and laws’ of the United States.”  
14 Wilder v. Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).  
15 Section 1983 is not itself a source of substantive rights, but merely provides a method for  
16 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94  
17 (1989).

18 To state a claim under Section 1983, a plaintiff must allege two essential  
19 elements: (1) that a right secured by the Constitution or laws of the United States was  
20 violated and (2) that the alleged violation was committed by a person acting under the  
21 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda  
22 Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

23 A complaint must contain “a short and plain statement of the claim showing that  
24 the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
25 are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
26 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct.  
27 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).  
28 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is

1       plausible on its face.” Id. Facial plausibility demands more than the mere possibility  
2       that a defendant committed misconduct and, while factual allegations are accepted as  
3       true, legal conclusions are not. Id. at 1949-50.

4           **B. Insufficient Pleading**

5           Pursuant to Rule 8(a) of the Federal Rules of Civil Procedure, the complaint or  
6       amended complaint must contain a “short and plain statement of the claim showing that  
7       the pleader is entitled to relief.” Although the Federal Rules adopt a flexible pleading  
8       policy, a complaint must give fair notice and state the elements of the claim plainly and  
9       succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984).

10          The First Amended Complaint is not a short and plain statement of Plaintiff’s claim  
11       but thirty pages of alternatively vague and specific allegations against an unspecified  
12       number of Defendants. Plaintiff’s allegations are so broad and sweeping that the Court  
13       cannot parse out which claims Plaintiff intends to pursue. The amended complaint  
14       begins with general assertions about prison medical care and then tries unsuccessfully  
15       to set out a step-by-step timeline of the events underlying Plaintiff’s claims. The  
16       allegations go back and forth between very specific examples of misconduct that lack  
17       context to conclusory or speculative summaries of the Defendants motives.

18          For example, on page nineteen, Plaintiff alleges that a Defendant denied him  
19       adequate pain medication. That brief allegation, which may state a claim, introduces a  
20       long paragraph where Plaintiff speculates that treatment is being intentionally denied to  
21       generate prisoner complaints which lead to more funding that is then possibly funneled  
22       elsewhere. Similar digressions occur throughout the amended complaint and make  
23       Plaintiff’s exact claims difficult to discern.

24          The Court simply does not have the time that would be necessary to try to  
25       organize Plaintiff’s allegations and determine what claims he is trying to assert against  
26       whom. Instead, Plaintiff will be given an opportunity to amend. Any amended complaint  
27       must be a short and plain statement of Plaintiff’s claims. Plaintiff shall avoid conclusory  
28       statements and simply allege the facts underlying his claims. Each Defendant and the

1 claims against him or her must be clearly identified. The amended complaint should not  
2 exceed fifteen legible pages. The following sections of this order will provide legal  
3 standards that may be applicable to Plaintiff's intended claims.

4 **C. Section 1983 Linkage Requirement**

5 Under § 1983, Plaintiff must demonstrate that each defendant personally  
6 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th  
7 Cir. 2002). This requires the presentation of factual allegations sufficient to state a  
8 plausible claim for relief. Iqbal, 129 S.Ct. at 1949-50; Moss v. U.S. Secret Service, 572  
9 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting  
10 this plausibility standard. Id.

11 The statute requires that there be an actual connection or link between the  
12 actions of the defendants and the deprivation alleged to have been suffered by the  
13 plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978).  
14 Government officials may not be held liable for the actions of their subordinates under a  
15 theory of respondeat superior. Iqbal, 129 S.Ct. at 1948. Since a government official  
16 cannot be held liable under a theory of vicarious liability in § 1983 actions, Plaintiff must  
17 plead sufficient facts showing that the official has violated the Constitution through his  
18 own individual actions. Id. at 1948. In other words, to state a claim for relief under §  
19 1983, Plaintiff must link each named defendant with some affirmative act or omission  
20 that demonstrates a violation of Plaintiff's federal rights.

21 **D. Inadequate Medical Care**

22 While the Eighth Amendment of the United States Constitution entitles Plaintiff to  
23 medical care, it is violated only when a prison official acts with deliberate indifference to  
24 an inmate's serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir.  
25 2012); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d  
26 1091, 1096 (9th Cir. 2006). Plaintiff "must show [1] a serious medical need by  
27 demonstrating that failure to treat [his] condition could result in further significant injury or  
28 the unnecessary and wanton infliction of pain," and (2) that "the defendant's response to

1 the need was deliberately indifferent.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d  
2 1091, 1096 (9th Cir. 2006)). Deliberate indifference is shown by “(a) a purposeful act or  
3 failure to respond to a prisoner’s pain or possible medical need, and (b) harm caused by  
4 the indifference.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096).

5 **E. Americans with Disabilities Act**

6 Title II of the ADA provides that “no qualified individual with a disability shall, by  
7 reason of such disability, be excluded from participation in or be denied the benefits of  
8 the services, programs, or activities of a public entity, or be subject to discrimination by  
9 such entity.” 42 U.S.C. § 12132. Title II applies to the services, programs, and activities  
10 provided for inmates by jails and prisons. Pennsylvania Dep’t of Corr. v. Yeskey, 524  
11 U.S. 206, 208-13 (1998); Simmons v. Navajo Cnty., 609 F.3d 1011, 1021-22 (9th Cir.  
12 2010). To establish a violation of Title II of the ADA, a plaintiff must show that “(1) he is  
13 an individual with a disability; (2) he is otherwise qualified to participate in or receive the  
14 benefit of some public entity’s services, programs, or activities; (3) he was either  
15 excluded from participation in or denied the benefits of the public entity’s services,  
16 programs, or activities, or was otherwise discriminated against by the public entity; and  
17 (4) such exclusion, denial of benefits, or discrimination was by reason of [his] disability.”  
18 Simmons, 609 F.3d at 1021 (quoting McGary v. City of Portland, 386 F.3d 1259, 1265  
19 (9th Cir. 2004)).

20 **F. Inmate Appeals Process**

21 “The Fourteenth Amendment’s Due Process Clause protects persons against  
22 deprivations of life, liberty, or property; and those who seek to invoke its procedural  
23 protection must establish that one of these interests is at stake.” Wilkinson v. Austin,  
24 545 U.S. 209, 221 (2005). Plaintiff does not have a protected liberty interest in the  
25 processing his appeals, and therefore, he cannot pursue a claim for denial of due  
26 process with respect to the handling or resolution of his appeals. Ramirez v. Galaza,  
27 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir.  
28 1988)).

1                   **G.     Retaliation**

2                   Allegations of retaliation against a prisoner's First Amendment rights to speech or  
3 to petition the government may support a section 1983 claim. Silva v. Di Vittorio, 658  
4 F.3d 1090, 1104 (9th Cir. 2011); Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985);  
5 see also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v. Rowland,  
6 65 F.3d 802, 807 (9th Cir. 1995). "Within the prison context, a viable claim of First  
7 Amendment retaliation entails five basic elements: (1) An assertion that a state actor  
8 took some adverse action against an inmate (2) because of (3) that prisoner's protected  
9 conduct, and that such action (4) chilled the inmate's exercise of his First Amendment  
10 rights, and (5) the action did not reasonably advance a legitimate correctional goal."  
11 Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005); accord Watison v. Carter,  
12 668 F.3d 1108, 1114-15 (9th Cir. 2012); Silva, 658 at 1104; Brodheim v. Cry, 584 F.3d  
13 1262, 1269 (9th Cir. 2009).

14                   **H.     State Law Claims**

15                   Under the California Tort Claims Act (CTCA), a plaintiff may not maintain an  
16 action for damages against a public employee unless he has presented a written claim  
17 to the state Victim Compensation and Government Claims Board within six months of  
18 accrual of the action. See Cal. Gov't Code §§ 905, 911.2(a), 945.4 & 950.2; Mangold v.  
19 California Pub. Utils. Comm'n, 67 F.3d 1470, 1477 (9th Cir. 1995). A plaintiff may file a  
20 written application for leave to file a late claim up to one year after the cause of action  
21 accrues. Cal. Gov't Code § 911.4. The purpose of CTCA's presentation requirement is  
22 "to provide the public entity sufficient information to enable it to adequately investigate  
23 claims and to settle them, if appropriate, without the expense of litigation." City of San  
24 Jose v. Superior Court, 525 P.2d 701, 706 (1974). Thus, in pleading a state law claim,  
25 plaintiff must allege facts demonstrating that he has complied with CTCA's presentation  
26 requirement. State of California v. Superior Court (Bodde), 90 P.3d 116, 119 (2004).  
27 Failure to demonstrate compliance constitutes a failure to state a cause of action and will  
28 result in the dismissal of Plaintiff's state law claims. Id.

## 1. Negligence

“Under California law, ‘[t]he elements of negligence are: (1) defendant’s obligation to conform to a certain standard of conduct for the protection of others against unreasonable risks (duty); (2) failure to conform to that standard (breach of duty); (3) a reasonably close connection between the defendant’s conduct and resulting injuries (proximate cause); and (4) actual loss (damages).’” Corales v. Bennett, 567 F.3d 554, 572 (9th Cir. 2009) (quoting McGarry v. Sax, 158 Cal.App.4th 983, 994, 70 Cal.Rptr.3d 519 (2008) (internal quotations omitted)).

## 2. Medical Malpractice

"The elements of a medical malpractice claim are: (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and resulting injury; and (4) actual loss or damage resulting from the professional's negligence." Avivi v. Centro Medico Urgente Medical Center, 159 Cal.App.4th 463, 468, n.2, 71 Cal.Rptr.3d 707, 711 (Cal. Ct. App. 2008) (internal quotations and citation omitted).

## **V. CONCLUSION AND ORDER**

Plaintiff's First Amended Complaint does not state a claim for relief. The Court will grant Plaintiff an opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff opts to amend, he must demonstrate that the alleged acts resulted in a deprivation of his constitutional rights. Iqbal, 129 S.Ct. at 1948-49. Plaintiff must set forth "sufficient factual matter . . . to 'state a claim that is plausible on its face.'" Id. at 1949 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate that each named Defendant personally participated in a deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

Plaintiff should note that although he has been given the opportunity to amend, it is not for the purposes of adding new claims. *George v. Smith*, 507 F.3d 605, 607 (7th

1 Cir. 2007). Plaintiff should carefully read this Screening Order and focus his efforts on  
2 curing the deficiencies set forth above.

3 Finally, Plaintiff is advised that Local Rule 220 requires that an amended  
4 complaint be complete in itself without reference to any prior pleading. As a general  
5 rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
6 F.2d 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint  
7 no longer serves any function in the case. Therefore, in an amended complaint, as in an  
8 original complaint, each claim and the involvement of each defendant must be  
9 sufficiently alleged. The amended complaint should be clearly and boldly titled "First  
10 Amended Complaint," refer to the appropriate case number, and be an original signed  
11 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.  
12 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a  
13 right to relief above the speculative level . . . ." Twombly, 550 U.S. at 555 (citations  
14 omitted).

15 Accordingly, it is HEREBY ORDERED that:

- 16 1. The Clerk's Office shall send Plaintiff a blank civil rights complaint form;
- 17 2. Plaintiff's First Amended Complaint is dismissed for failure to state a claim  
upon which relief may be granted;
- 18 3. Plaintiff shall file an amended complaint within thirty (30) days; and
- 19 4. If Plaintiff fails to file an amended complaint in compliance with this order,  
20 this action will be dismissed, with prejudice, for failure to state a claim and failure to  
21 comply with a court order.

22  
23 IT IS SO ORDERED.  
24

25 Dated: November 25, 2014

26 /s/ Michael J. Seng  
27 UNITED STATES MAGISTRATE JUDGE  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28