

1 States District Court for the Eastern District of California on October 14, 2011. (Order of
2 Transfer, ECF No. 3.)

3 Plaintiff's Complaint was dismissed for failure to state a claim but he was given
4 leave to file an amended complaint. (Order Dismss. Compl., ECF No. 16.)

5 Plaintiff filed a First Amended Complaint (First Am. Compl., ECF No. 17) which is
6 now before the Court for screening.

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8 **II. SCREENING REQUIREMENT**

9 The Court is required to screen complaints brought by prisoners seeking relief
10 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
11 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
12 raised claims that are legally "frivolous, malicious," or that fail to state a claim upon which
13 relief may be granted, or that seek monetary relief from a defendant who is immune from
14 such relief. 28 U.S.C. § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion
15 thereof, that may have been paid, the court shall dismiss the case at any time if the court
16 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
17 granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

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19 Section 1983 "provides a cause of action for the 'deprivation of any rights, privileges,
20 or immunities secured by the Constitution and laws' of the United States." Wilder v. Virginia
21 Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not
22 itself a source of substantive rights, but merely provides a method for vindicating federal
23 rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393–94 (1989).

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

2 Plaintiff reiterates claims in his original Complaint that during 2009-2011 while at
3 KVSP a doctor told him he would be sent to an outside hospital for surgery relating to a
4 metal plate in his left hand, but he was not sent out for such surgery. (First Am. Compl.,
5 at 4.) He additionally alleges that “[h]e was discriminated [against]” in this regard. (Id.)
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7 He names as Defendant R.C. Ruth, Health Care Manager and Director of Nurses
8 at KVSP. (Id. at 3-4.)

9 He seeks money damages for pain and suffering and medical and mental distress.
10 (Id. at 4.)

11 **IV. ANALYSIS**

12 **A. Pleading Requirements Generally**

13 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that
14 a right secured by the Constitution or laws of the United States was violated and (2) that
15 the alleged violation was committed by a person acting under the color of state law. See
16 West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245
17 (9th Cir.1987).
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19 A complaint must contain “a short and plain statement of the claim showing that the
20 pleader is entitled to relief” Fed.R.Civ.P. 8(a)(2). Detailed factual allegations are not
21 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
22 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937,
23 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must
24 set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on
25 its face.’” Id. Facial plausibility demands more than the mere possibility that a defendant
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1 committed misconduct and, while factual allegations are accepted as true, legal
2 conclusions are not. Id. at 1949–50.

3 **B. Section 1983 Linkage Requirement**

4 Under § 1983, a plaintiff must demonstrate that each defendant personally
5 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
6 2002). The statute requires that there be an actual connection or link between the actions
7 of the defendants and the deprivation alleged to have been suffered by the plaintiff. See
8 Monell v. Department of Social Services, 436 U.S. 658 (1978). Government officials may
9 not be held liable for the actions of their subordinates under a theory of respondeat
10 superior. Iqbal, 129 S.Ct. at 1948. Since a government official cannot be held liable under
11 a theory of vicarious liability in § 1983 actions, a plaintiff must plead sufficient facts
12 showing that the official has violated the Constitution through his own individual actions.
13 Id. at 1948.

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16 Plaintiff was advised of these linkage requirements in the original screening order
17 and advised that his initial pleading failed to link Defendant Roth to any act or omission that
18 demonstrates a violation of Plaintiff's federal rights and given an opportunity to correct
19 deficiencies. He has again failed allege facts plausibly linking Defendant Roth to some
20 affirmative act or omission that demonstrates a violation of Plaintiff's federal rights.

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22 **C. Inadequate Medical Care**

23 Plaintiff alleges he received inadequate medical care in violation of the Eighth
24 Amendment.

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

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15 In applying this standard, the Ninth Circuit has held that before it can be said that
16 a prisoner’s civil rights have been abridged, “the indifference to his medical needs must be
17 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this
18 cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980)
19 (citing Estelle, 429 U.S. at 105–06). A defendant acts with deliberate indifference when he
20 knowingly fails to respond to a serious medical need, thereby inflicting harm on the plaintiff.
21 Farmer, 511 U.S. 825 at 837-42.

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23 Plaintiff again fails to allege a serious medical need. The allegation a doctor told him
24 he would be going to an outside hospital for surgery suggests the possibility of a serious
25 condition, but provides nothing upon which to conclude it was indeed a serious condition.
26 “A ‘serious’ medical need exists if the failure to treat a prisoner’s condition could result in
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1 further significant injury or the 'unnecessary and wanton infliction of pain.'" McGuckin, 974
2 F.2d at 1059 (quoting Estelle, 429 U.S. at 104). A court should consider whether a
3 reasonable doctor would think that the condition is worthy of comment, whether the
4 condition significantly affects the prisoner's daily activities, and whether the condition is
5 chronic and accompanied by substantial pain. See Lopez v. Smith, 203 F.3d 1122,
6 1131-32 (9th Cir. 2000). Here the Court is once again left to speculate in these regards.
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8 Plaintiff also fails to allege Defendant Ruth acted with deliberate indifference to any
9 serious health risk or need. Plaintiff's mere disagreement or dissatisfaction with the care
10 and treatment provided to him or even a harmless delay in providing it does not state a
11 constitutional claim for deliberate indifference. See Toguchi v. Chung, 391 F.3d 1051, 1058
12 (9th Cir. 2004). The Eighth Amendment does not require that prisoners receive "unqualified
13 access to health care." Hudson v. McMillian, 503 U.S. 1, 9 (1992).
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15 Plaintiff's First Amended Complaint does not allege fact supporting a plausible
16 Eighth Amendment deliberate indifference claim against Defendant Ruth. The Court
17 previously identified the deficiencies in this claim and gave Plaintiff an opportunity to
18 correct them. Plaintiff has failed to do so. No useful purpose would be served in once again
19 advising Plaintiff as to what is needed and what is lacking in his claims and giving him yet
20 another opportunity to follow those same instructions. It is reasonable to conclude that if
21 Plaintiff could have amended in compliance with the Court's previous screening order, he
22 would have done so. Nothing before the Court reasonably suggests that Plaintiff can
23 successfully amend. Further leave to amend would be futile and will not be granted.
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1 **D. Equal Protection**

2 Plaintiff alleges that he was discriminated against in relation to his purported Eighth
3 Amendment claim.

4 “The Equal Protection Clause . . . is essentially a direction that all persons similarly
5 situated should be treated alike.” City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S.
6 432, 439 (1985) (citing Plyler v. Doe, 457 U.S. 202, 216 (1982)). An equal protection claim
7 may be established by showing that the defendant intentionally discriminated against the
8 plaintiff based on the plaintiff’s membership in a protected class, Serrano v. Francis, 345
9 F.3d 1071, 1082 (9th Cir. 2003), or that similarly situated individuals were intentionally
10 treated differently without a rational relationship to a legitimate state purpose. Village of
11 Willowbrook v. Olech, 528 U.S. 562, 564 (2000); see also Lazy Y Ranch Ltd. v. Behrens,
12 546 F.3d 580, 592 (9th Cir. 2008). A plaintiff must allege sufficient facts either showing
13 intentional unlawful discrimination or “that are at least susceptible of an inference of
14 discriminatory intent.” Monteiro v. Tempe Union High School Dist., 158 F.3d 1022, 1026
15 (9th Cir. 1998); see Iqbal, 129 S. Ct. at 1949-50.

16 Plaintiff alleges no facts in support of his conclusion that he was unlawfully
17 discriminated against. His mere allegation that “he was discriminated [against]” without
18 more cannot support a violation of his constitutional rights. He has failed to allege the
19 elements of a cognizable equal protection claim.
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23 For the same reasons as stated above with regard to the medical care claim, it must
24 be concluded that Plaintiff can not successfully amend his claim. Plaintiff’s deficient
25 medical indifference claim can not serve as a predicate for a discrimination claim.
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1 Accordingly, for the reasons stated amendment of this claim would be futile and will
2 not be granted.

3 **V. CONCLUSION AND ORDER**

4 The Court finds that Plaintiff's First Amended Complaint fails to state any § 1983
5 claim upon which relief may be granted against Defendant. Leave to amend would be futile
6 for the reasons set out above and will not be granted. Plaintiff's action should be dismissed
7 with prejudice.
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9 Based on the foregoing, it is **HEREBY ORDERED** that:

- 10 1. This action shall be dismissed with prejudice for failure to state a claim,
- 11 2. Dismissal is subject to the "three strikes" provision set forth in 28 U.S.C. §
12 1915(g); *Silva v. Di Vittorio* 658 F.3d 1090 (9th Cir. 2011), and
- 13 3. The Clerk shall close the file in this case.
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15 IT IS SO ORDERED.

16 Dated: May 21, 2012

17 */s/ Michael J. Seng*
18 UNITED STATES MAGISTRATE JUDGE
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