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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES R. PATTERSON,

CASE NO. 1:12-CV-0132-MJS (PC)

Plaintiff,

ORDER DISMISSING PLAINTIFF'S FIRST
AMENDED COMPLAINT WITH LEAVE TO
AMEND

v.

(ECF NO. 11)

KERN COUNTY SHERIFF'S OFFICE, et
al.

AMENDED COMPLAINT DUE WITHIN
THIRTY (30) DAYS

Defendants.

_____ /

SCREENING ORDER

I. PROCEDURAL HISTORY

Plaintiff James R. Patterson, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on January 25, 2012 pursuant to 42 U.S.C. § 1983 alleging excessive force and medical indifference. (ECF No. 1.) The Court dismissed the Complaint for failure to state a claim, but allowed Plaintiff leave to file an amended complaint (ECF No. 10). Plaintiff filed his First Amended Complaint on March 19, 2012 (ECF No. 11.) It is now before the Court for screening.

1 **II. SCREENING REQUIREMENT**

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

18 **III. SUMMARY OF COMPLAINT**

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20 Plaintiff was incarcerated at the Ledro Pretrial Detention Center in Bakersfield,
21 California (“Ledro”), during the events alleged. (First Am. Compl. p. 2, ECF No. 11.) He
22 was in mechanical restraints in the suicide tank when he “tried to make [himself]
23 comfortable by slipping the chains around [his] waist to bring [his] hands under [his] head.
24 [He] fell asleep.” (First Am. Compl. at 3.) He awakened to a corrections officer kneeling and
25 kicking him. (Id.) He offered no resistance. (Id. at 3-4) He was pepper sprayed and fell and
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1 hit his head. (Id. at 4.) He was given a shower and his cell was cleaned, but the pepper
2 spray burning sensation lasted for several hours. (Id.) He since has suffered infections,
3 gone through two pairs of glasses and suffered nightmares causing fear of sleeping. (Id.
4 at 5.)

5 Defendants named are (1) the Kern County Sheriff's Office, (2) Sergeant McMasters,
6 (3) Mrs. Grimm, (4) Mr. Miller, and (5) other officers unknown. (Id. at 3.)

8 **IV. ANALYSIS**

9 **A. Pleading Requirements Generally**

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

15 A complaint must contain "a short and plain statement of the claim showing that the
16 pleader is entitled to relief" Fed.R.Civ.P. 8(a)(2). Detailed factual allegations are not
17 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
18 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937,
19 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). A plaintiff
20 must set forth "sufficient factual matter, accepted as true, to 'state a claim that is plausible
21 on its face.'" Id. Facial plausibility demands more than the mere possibility that a defendant
22 committed misconduct and, while factual allegations are accepted as true, legal conclusions
23 are not. Id. at 1949–50.

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1 **B. Municipal Liability**

2 A local government unit may not be held responsible for the acts of its employees
3 under a respondeat superior theory of liability. Monell v. Department of Social Services, 436
4 U.S. 658, 691 (1978). A local government unit may only be held liable if it inflicts the injury
5 complained of through a policy or custom. Waggy v. Spokane County Washington, 594 F.3d
6 707, 713 (9th Cir. 2010).

7
8 A local government unit can be held liable under § 1983 under three theories. First,
9 where the implementation of official policies or established customs, causes the
10 constitutional injury. Clouthier v. County of Contra Costa, 591 F.3d 1232, 1249 (9th Cir.
11 2010). Second, where acts or omissions causing the constitutional injury amount to official
12 policy of the municipality. Id. at 1249. Finally, where an official has ratified the
13 unconstitutional decision or action of an employee of the municipality. Id. at 1250. “A
14 custom can be shown or a policy can be inferred from widespread practices or ‘evidence
15 of repeated constitutional violations for which the errant municipal officers were not
16 discharged or reprimanded.’” Pierce v. County of Orange, 526 F.3d 1190, 1211 (9th Cir.
17 2008).

18
19 A policy can be one of action or inaction and “is defined as ‘a deliberate choice to
20 follow a course of action ... made from among various alternatives by the official or officials
21 responsible for establishing final policy with respect to the subject matter in question.’”
22 Waggy, 594 F.3d at 713 (quoting Monell, 436 U.S. at 690).

23
24 To find a municipality liable for a failure to act, the plaintiff must show that an
25 employee of the municipality violated his constitutional rights, that the customs or policies
26 of the municipality amount to deliberate indifference, and those “customs or policies were
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1 the moving force behind” the violation of plaintiff’s constitutional rights. Long v. County of
2 Los Angeles, 442 F.3d 1178, 1186 (9th Cir. 2006). For a custom or policy to be the moving
3 force behind the constitutional violation, it must be “closely related to the ultimate injury.”
4 Long, 442 F.3d at 1190.

5 Plaintiff fails again to allege any facts supporting municipal liability. The First
6 Amended Complaint does not identify any specific policy, widespread practice, or ratified
7 conduct that was the moving force behind the alleged violation.
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9 Although Plaintiff previously was advised of the deficiencies of his pleading in this
10 regard and of what was necessary to correct them, he apparently was not able to do so.
11 No useful purpose would be served by again advising him of the defects and applicable law
12 and giving him another chance to amend to assert municipal liability.

13 **C. Personal Participation**

14 Under § 1983, Plaintiff must demonstrate that each individually named defendant
15 personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934
16 (9th Cir. 2002). The Supreme Court has emphasized that the term “supervisory liability,”
17 loosely and commonly used by both courts and litigants alike, is a misnomer. Iqbal, 129
18 S.Ct. at 1949. “Government officials may not be held liable for the unconstitutional conduct
19 of their subordinates under a theory of respondeat superior.” Id. at 1948. Rather, each
20 government official, regardless of his or her title, is only liable for his or her own misconduct,
21 and therefore, Plaintiff must demonstrate that each defendant, through his or her own
22 individual actions, violated Plaintiff’s constitutional rights. Id. at 1948–49.

23 “As a general rule, the use of ‘John Doe’ to identify a defendant is not favored.”
24 Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). “It is permissible to use Doe
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1 defendant designations in a complaint to refer to defendants whose names are unknown
2 to plaintiff. Although the use of Doe defendants is acceptable to withstand dismissal of a
3 complaint at the initial review stage, using Doe defendants creates its own problem: those
4 persons cannot be served with process until they are identified by their real names.”
5 Robinett v. Correctional Training Facility, 2010 WL 2867696, *4 (N.D. Cal. July 20, 2010).

6
7 Plaintiff has added individually named Defendants to his First Amended Complaint,
8 but fails to allege facts showing how each personally violated or knowingly directed a
9 violation of his rights. As noted, Plaintiff may not proceed against individual defendants
10 unless he identifies them or names them as Doe defendants and describes how each
11 *personally* violated, or knowingly directed a violation of, his constitutional rights.

12 Plaintiff is advised that any named Doe defendants cannot be served by the United
13 States Marshal until Plaintiff has identified them as actual individuals and amended his
14 complaint to substitute the defendants' actual names. The burden remains on Plaintiff to
15 promptly discover the full names of Doe defendants. Id.

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17 **D. Excessive Force**

18 Plaintiff alleges that Defendant used excessive force against him in violation of the
19 constitutional right to be free of such force.¹

20 The analysis of an excessive force claim brought pursuant to § 1983 begins with
21 “identifying the specific constitutional right allegedly infringed by the challenged application
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23 ¹ It remains unclear from the pleadings whether Plaintiff had been convicted of a crime at the time
24 of the alleged violations. Claims for excessive force, when brought by a detainee who has been neither
25 charged nor convicted of a crime, are analyzed under the Fourteenth Amendment reasonableness
26 standard. Gibson v. County of Washoe, 290 F.3d 1175, 1185–86 (9th Cir. 2002); Frost v. Agnos, 152 F.3d
27 1124, 1128 (9th Cir. 1998). Claims for excessive force, when brought by a prisoner who has been charged
and convicted, are analyzed under the Eighth Amendment cruel and unusual punishments standard.
Wilkins v. Gaddy, —U.S. —, —, 130 S.Ct. 1175, 1178 (2010).

1 of force.” Graham v. Connor, 490 U.S. 386, 394 (1989).

2 The Due Process Clause of the Fourteenth Amendment protects detainees from the
3 use of excessive force. Redman v. County of San Diego, 942 F.2d 1435, 1440 (9th Cir.
4 1991) (quoting Graham v. Connor, 490 U.S. 386, 395 n.10 (1989)). In resolving a
5 substantive due process claim, courts must balance “several factors focusing on the
6 reasonableness of the officers’ actions given the circumstances.” White v. Roper, 901 F.2d
7 1501, 1507 (9th Cir. 1990) (quoting Smith v. City of Fontana, 818 F.2d 1411, 1417 (9th Cir.
8 1987)) (overruled on other grounds). In the White case, the Ninth Circuit articulated four
9 factors that courts should consider in resolving a due process claim alleging excessive
10 force. The factors are (1) the need for the application of force, (2) the relationship between
11 the need and the amount of force that was used, (3) the extent of the injury inflicted, and
12 (4) whether force was applied in a good faith effort to maintain and restore discipline. White
13 901 F.2d at 1507.
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16 The Cruel and Unusual Punishments Clause of the Eighth Amendment protects
17 prisoners from the use of excessive physical force. Wilkins v. Gaddy, —U.S. —, —,
18 130 S.Ct. 1175, 1178 (2010); See Hudson v. McMillian, 503 U.S. 1, 8–9 (1992); see also
19 Bell v. Wolfish, 441 U.S. 520, 535 (1979). To state an Eighth Amendment claim, a plaintiff
20 must allege that the use of force was an “unnecessary and wanton infliction of pain.” Jeffers
21 v. Gomez, 267 F.3d 895, 910 (9th Cir. 2001). The malicious and sadistic use of force to
22 cause harm always violates contemporary standards of decency, regardless of whether or
23 not significant injury is evident. Hudson, 503 U.S. at 9; see also Oliver v. Keller, 289 F.3d
24 623, 628 (9th Cir. 2002) (Eighth Amendment excessive force standard examines de minimis
25 uses of force, not de minimis injuries). However, not “every malevolent touch by a prison
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1 guard gives rise to a federal cause of action.” Hudson, 503 U.S. at 9. “The Eighth
2 Amendment's prohibition of cruel and unusual punishments necessarily excludes from
3 constitutional recognition de minimis uses of physical force, provided that the use of force
4 is not of a sort repugnant to the conscience of mankind.” Id. at 9–10.

5 Whether force used by prison officials was excessive for purposes of the Eighth
6 Amendment is determined by inquiring if the “force was applied in a good-faith effort to
7 maintain or restore discipline, or maliciously and sadistically to cause harm.” Id. at 6–7. A
8 court must look at the need for application of force; the relationship between that need and
9 the amount of force applied; the extent of the injury inflicted; the extent of the threat to the
10 safety of staff and inmates as reasonably perceived by prison officials; and any efforts made
11 to temper the severity of the response. Whitley v. Albers, 475 U.S. 312, 321 (1976). The
12 absence of significant injury alone is not dispositive of a claim of excessive force. Wilkins,
13 130 S.Ct. at 1176–77; See Felix v. McCarthy, 939 F.2d 699, 702 (9th Cir. 1991)
14 (unprovoked and unjustified attack on prisoner violates constitution regardless of degree
15 of injury).

16 Plaintiff was in mechanical restraints when, he alleges, Defendants kicked, twisted
17 and pepper sprayed him. Such force may be unreasonable and constitute excessive force
18 where unnecessary and unjustified under the circumstances. However, Plaintiff again fails
19 to provide sufficient information to enable the Court to evaluate whether the facts would
20 support a claim of unnecessary and unjustified force. In this regard proper evaluation would
21 necessitate information as the nature of and asserted purpose for the mechanical restraints
22 and Plaintiff’s repositioning of them, the specific events immediately leading up to the
23 guards actions, the amount and duration of force applied, and Plaintiff’s response to the
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1 force. The existing pleading leaves open the possibility that the force used may have been
2 an appropriate response to a reasonable belief that Plaintiff was attempting to hurt himself
3 or to free himself from the restraints or simply a response to a violent reaction from a
4 suddenly awakened Plaintiff.

5 Courts have found a excessive force claim where an officer uses pepper spray
6 without warning on an inmate who may have questioned his actions but who otherwise
7 poses no threat, *Treats v. Morgan*, 308 F.3d 868, 873 (8th Cir. 2002), but not where guards
8 administer a single shot of pepper spray as a proportionate response when inmate
9 becomes agitated and refuses to obey orders. *Giles v. Kearney*, 571 F.3d 318, 330 (3d Cir.
10 2009); see also *Fennell v. Gilstrap*, 559 F.3d 1212, 1217, (11th Cir. 2009) (finding a jailor's
11 kick to pretrial detainee's face, resulting in fractures, not to be excessive force under the
12 Fourteenth Amendment where inmate was struggling with other officers and had not yet
13 been secured, and officers immediately offered medical care, the court there noting "use
14 of force does not 'shock the conscience' if it is applied in 'a good-faith effort to maintain or
15 restore discipline.'")

16 The Court will grant Plaintiff **one final opportunity** to amend this claim. In order to
17 state a cognizable claim for excessive force in an amended complaint, Plaintiff must provide
18 truthful facts, not just speculation or suspicion, that support the allegation that, under the
19 circumstances, each named defendant acted unreasonably, maliciously, sadistically, and
20 motivated by a desire to cause harm to Plaintiff. See *Dennis v. Huskey*, 2008 WL 413772,
21 *4, *5 (E.D.Cal. Feb.13, 2008) (plaintiff provided sufficient factual detail to support the
22 allegation that the defendant slammed the food port door shut maliciously and sadistically
23 for the very purpose of causing harm rather than in a good faith effort to maintain or restore
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1 discipline). Plaintiff must also describe in detail what injury, if any, he experienced as a
2 result.

3 **E. Indifference to Medical Needs**

4 Plaintiff claims that Defendants were deliberately indifferent to his serious medical
5 needs resulting from the use of force.² “[T]o maintain an Eighth Amendment claim based
6 on prison medical treatment, an inmate must show ‘deliberate indifference to serious
7 medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v.
8 Gamble, 429 U.S. 97, 106 (1976)). The two prong test for deliberate indifference requires
9 the plaintiff to show (1) “‘a serious medical need’ by demonstrating that ‘failure to treat a
10 prisoner's condition could result in further significant injury or the unnecessary and wanton
11 infliction of pain,’” and (2) “the defendant's response to the need was deliberately
12 indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059 (9th
13 Cir. 1991)), (overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th
14 Cir. 1997)) (quoting Estelle, 429 U.S. at 104). Deliberate indifference is shown by “a
15 purposeful act or failure to respond to a prisoner's pain or possible medical need, and harm
16 caused by the indifference.” Jett, 439 F.3d at 1096 (citing McGuckin, 974 F.2d at 1060). In
17 order to state a claim for violation of the Eighth Amendment, a plaintiff must allege sufficient
18 facts to support a claim that the named defendant(s) “[knew] of and disregard[ed] an
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22 ² As noted, it remains unclear from the pleadings whether Plaintiff had been convicted of a crime
23 at the time of the alleged violations. As a detainee, Plaintiff is protected from conditions of confinement
24 which amount to punishment. Bell v. Wolfish, 441 U.S. 520, 535-36 (1979); Simmons v. Navajo County,
25 Ariz., 609 F.3d 1011, 1017-18 (9th Cir. 2010); Clouthier v. County of Contra Costa, 591 F.3d 1232, 1244
26 (9th Cir. 2010). While detainees' rights are protected under the Due Process Clause of the Fourteenth
27 Amendment, the standard for claims brought under the Eighth Amendment has long been used to analyze
detainees' conditions of confinement claims. Simmons, 609 F.3d at 1017-18; Clouthier, 591 F.3d at 1242;
Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). The law applicable to Plaintiff's medical indifference
claim is the same regardless of his custody status.

1 excessive risk to [plaintiff's] health” Farmer v. Brennan, 511 U.S. 825, 837 (1994).

2 In applying this standard, the Ninth Circuit has held that before it can be said that a
3 prisoner's civil rights have been abridged, “the indifference to his medical needs must be
4 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this
5 cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing
6 Estelle, 429 U.S. at 105–06). A defendant acts with deliberate indifference when he
7 knowingly fails to respond to a serious medical need, thereby inflicting harm on the plaintiff.
8 Farmer, 511 U.S. 825 at 837-42. Even gross negligence is insufficient to establish
9 deliberate indifference to serious medical needs. See Wood v. Housewright, 900 F.2d 1332,
10 1334 (9th Cir. 1990).

12 “Serious Medical needs” encompass conditions that are life-threatening or that carry
13 risks of permanent serious impairment if left untreated, those that result in needless pain
14 and suffering when treatment is withheld and those that have been diagnosed by a
15 physician as mandating treatment.” Scarver v. Litscher, 371 F.Supp.2d 986, 999 (W.D.Wis.
16 2005) (citing Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997)). See McGuckin, 974
17 F.2d at 1059–60 (“[T]he existence of an injury that a reasonable doctor or patient would find
18 important and worthy of comment or treatment; the presence of a medical condition that
19 significantly affects an individual's daily activities; or the existence of chronic and substantial
20 pain are examples of indications that a prisoner has a ‘serious’ need for medical treatment.”)

23 Plaintiff fails properly to allege serious medical need. He claims he hit his head and
24 that the pepper spray caused a burning sensation. No facts before the Court demonstrate
25 that these injuries were life threatening, significant if untreated, chronically painful, or
26 interfered with daily activities. Plaintiff has failed to allege a serious medical need sufficient
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1 to satisfy the first prong of deliberate indifference.

2 More significantly, there are no facts plausibly demonstrating that Defendants were
3 deliberately indifferent to Plaintiff's medical needs. His pleadings suggest just the opposite.
4 After being sprayed he received a hot shower and his cell was cleaned. (First Am. Compl.
5 at 4.) Nothing before the Court demonstrates that Defendants were aware of a serious
6 medical need and then intentionally denied, delayed, or interfered with treatment, so as to
7 state a claim for deliberate indifference. See *Johnson v. Quinones*, 145 F.3d 164, 168 (4th
8 Cir. 1998) (a prisoner must allege that prison officials actually drew the inference between
9 the [medical condition] and a specific risk of harm). See *Reyes v. McGrath*, 444 Fed. Appx.
10 126, 127 (9th Cir. 2011) (deliberate indifference stated where, following use of pepper
11 spray, inmate displays symptoms of harmful effects, defendants were aware of these
12 symptoms, and refused to provide showers or medical care).

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15 Plaintiff's belief that he has suffered infections and vision changes secondary to
16 being pepper sprayed, however sincerely held, are speculative, conclusory and factually
17 unsupported. See *Bumpus v. Canfield*, 495 F.Supp.2d 316, 322 (W.D.N.Y. 2007) (prison
18 physician's delay of several days in dispensing inmate's medication did not demonstrate
19 deliberate indifference to inmate's serious medical needs, where there was no evidence that
20 inmate experienced any complications during the time he was waiting for his prescription
21 to be refilled); see also *McGuckin*, 974 F.2d at 1060 (where delay in treatment is alleged
22 as basis for deliberate indifference, the prisoner must also demonstrate that the delay led
23 to further injury); see also *Jackson v. Meachum*, 699 F.2d 578, 583 (1st Cir.1983) ("[to]
24 make the Eighth Amendment a guarantor of a prison inmate's prior mental health ... would
25 go measurably beyond what today would generally be deemed 'cruel and unusual'").
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1 Plaintiff's attribution of staph infections and long-term vision problems from the spray
2 appears to be pure speculation on the part of a lay person without medical training; Plaintiff
3 has referred to no medical evidence supporting his suspicions in this regard.

4 Plaintiff fails to state a medical deliberate indifference claim against Defendants. The
5 Eighth Amendment does not require that prisoners receive "unqualified access to health
6 care." Hudson v. McMillian, 503 U.S. 1, 9 (1992).

7
8 For the same reasons stated above, the Court concludes that no useful purpose
9 would be served in allowing Plaintiff leave to amend this claim.

10 **F. Relief for Mental or Emotional Injury**

11 Pursuant to 42 U.S.C. § 1997e(e), the law is clear that, "[n]o Federal civil action may
12 be brought by a prisoner confined in a ... correctional facility, for mental or emotional injury
13 suffered while in custody without a prior showing of physical injury." In the absence of any
14 allegation of facts showing actual injury, the Plaintiff also has failed to allege a claim which
15 amounts to a constitutional violation. See e.g., White v. Simpson, 2005 WL 425264
16 (N.D.Tex. Feb.22, 2005) ("Despite his conclusory and self-serving assertion that outdoor
17 exercise is essential to preserve health, plaintiff did not suffer any physical injury due to the
18 lack of recreation. Under these circumstances, there is no constitutional violation.").

19
20 **V. CONCLUSION AND ORDER**

21 Plaintiff's First Amended Complaint does not state a claim for relief under § 1983.
22 The Court will grant Plaintiff one more opportunity to file an amended excessive force
23 complaint consistent with this screening order. Lopez v. Smith, 203 F.3d 1122, 1130 (9th
24 Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

25
26 If Plaintiff opts to amend, he must demonstrate that the alleged acts resulted in a
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1 deprivation of his constitutional rights. Iqbal, 129 S.Ct. at 1948–49. Plaintiff must set forth
2 “sufficient factual matter ... to ‘state a claim that is plausible on its face.’” Id. at 1949 (quoting
3 Twombly, 550 U.S. at 555.) Plaintiff must also demonstrate that each named defendant
4 personally participated in a deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934
5 (9th Cir. 2002).

6 Plaintiff should note that although he has been given the opportunity to amend, it is
7 not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th Cir.
8 2007). Plaintiff should carefully read this screening order and focus his efforts on curing the
9 deficiencies set forth above.
10

11 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint
12 be complete in itself without reference to any prior pleading. As a general rule, an amended
13 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
14 1967). Once an amended complaint is filed, the original complaint no longer serves any
15 function in the case. Therefore, in an amended complaint, as in an original complaint, each
16 claim and the involvement of each defendant must be sufficiently alleged. The amended
17 complaint should be clearly and boldly titled “Second Amended Complaint” refer to the
18 appropriate case number, and be an original signed under penalty of perjury. Plaintiff’s
19 amended complaint should be brief. Fed.R.Civ.P. 8(a). Although accepted as true, the
20 “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level
21” Twombly, 550 U.S. at 555.
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23
24 Based on the foregoing, it is **HEREBY ORDERED** that:

- 25 1. The Clerk’s Office shall send Plaintiff (1) a blank civil rights amended
26 complaint form and (2) a copy of his First Amended Complaint filed March 19,
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2012;

2. Plaintiff's First Amended Complaint is dismissed for failure to state a claim upon which relief may be granted;
3. Plaintiff shall file an amended complaint within thirty (30) days from service of this order; and
4. If Plaintiff fails to file an amended complaint in compliance with this order, this action shall be dismissed, with prejudice, for failure to state a claim and failure to prosecute, subject to the "three strikes" provision set forth in 28 U.S.C. § 1915(g). *Silva v. Di Vittorio* 658 F.3d 1090 (9th Cir. 2011).

IT IS SO ORDERED.

Dated: March 28, 2012

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE