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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

VALERIE G. JUAREZ,

CASE NO. 1:12-cv-01298-SKO PC

Plaintiff,

SECOND SCREENING ORDER DISMISSING  
ACTION, WITH PREJUDICE, FOR FAILURE  
TO STATE A CLAIM UNDER SECTION 1983

v.

DR. RAY,

(Doc. 8)

Defendant.

ORDER THAT DISMISSAL IS SUBJECT TO  
THREE STRIKES PROVISION UNDER 28  
U.S.C. § 1915(G)

**Second Screening Order**

**I. Screening Requirement and Standard**

Plaintiff Valerie G. Juarez, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on August 9, 2012. On March 14, 2013, the Court dismissed Plaintiff’s complaint, with leave to amend, for failure to state a claim. Plaintiff filed an amended complaint on April 12, 2013.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an 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 or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

1 A complaint must contain “a short and plain statement of the claim showing that the pleader  
2 is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
4 do not suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009) (citing *Bell Atlantic*  
5 *Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and courts “are not required to  
6 indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)  
7 (internal quotation marks and citation omitted). While factual allegations are accepted as true, legal  
8 conclusions are not. *Iqbal*, 556 U.S. at 678.

9 Pro se litigants are entitled to have their pleadings liberally construed and to have any doubt  
10 resolved in their favor, *Wilhelm v. Rotman*, 680 F.3d 1113, 1121-23 (9th Cir. 2012); *Hebbe v. Pliler*,  
11 627 F.3d 338, 342 (9th Cir. 2010), but Plaintiff’s claims must be facially plausible to survive  
12 screening, which requires sufficient factual detail to allow the Court to reasonably infer that each  
13 named defendant is liable for the misconduct alleged, *Iqbal*, 556 U.S. at 678 (quotation marks  
14 omitted); *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that  
15 a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of  
16 satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572  
17 F.3d at 969.

## 18 **II. Discussion**

### 19 **A. Allegations**

20 Plaintiff, who is incarcerated at Central California Women’s Facility (CCWF) in Chowchilla,  
21 brings this action against Doctor Ray, a CCWF physician. Plaintiff alleges that she broke her finger  
22 on August 4, 2011, and Defendant Ray told her he would send her to Madera Hospital if he could  
23 not relocate her finger. Defendant Ray proceeded to rebreak and relocate the finger, x-rays were  
24 taken, and Plaintiff was sent back to her housing unit.

25 Plaintiff was never sent to Madera Hospital, but on September 14, 2011, she was sent out for  
26 surgery.

27 On November 15, 2011, Plaintiff was told by a physical therapist that her finger will not bend  
28 due to calcium deposits around the knuckle, and on November 22, 2011, the physical therapist told

1 her that no progress had been made. Plaintiff alleges that her finger no longer functions and is  
2 damaged for life.

3 **B. Medical Care Claim**

4 Section 1983 provides a cause of action for the violation of constitutional or other federal  
5 rights by persons acting under color of state law, *Nurre v. Whitehead*, 580 F.3d 1087, 1092 (9th Cir  
6 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *Jones v. Williams*, 297  
7 F.3d 930, 934 (9th Cir. 2002), and for Eighth Amendment claims arising out of medical care in  
8 prison, Plaintiff “must show (1) a serious medical need by demonstrating that failure to treat [her]  
9 condition could result in further significant injury or the unnecessary and wanton infliction of pain,”  
10 and (2) that “the defendant’s response to the need was deliberately indifferent,” *Wilhelm*, 680 F.3d  
11 at 1122 (citing *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)). Deliberate indifference is  
12 shown by “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need,  
13 and (b) harm caused by the indifference.” *Wilhelm*, 680 F.3d at 1122 (citing *Jett*, 439 F.3d at 1096).  
14 The requisite state of mind is one of subjective recklessness, which entails more than ordinary lack  
15 of due care. *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012) (citation and quotation marks  
16 omitted); *Wilhelm*, 680 F.3d at 1122.

17 While the Court acknowledges Plaintiff’s allegation that her finger has been permanently  
18 damaged, her amended complaint contains no facts which support a claim that Defendant Ray acted  
19 with deliberate indifference to her serious medical needs. Plaintiff’s mere disagreement with the  
20 course of treatment chosen by Defendant Ray does not support a claim for relief under section 1983  
21 and nothing further has been shown. *Snow*, 681 F.3d at 987; *Wilhelm*, 680 F.3d at 1122-23.

22 **III. Conclusion and Order**

23 Plaintiff’s amended complaint fails to state a claim upon which relief may be granted under  
24 section 1983. Plaintiff was previously provided with notice of the deficiencies in her claims and an  
25 opportunity to amend, but she was unable to cure the deficiencies and further leave to amend is not  
26 warranted. *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d 1122,  
27 1130 (9th Cir. 2000); *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

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1           Accordingly, based on the foregoing, this action is HEREBY DISMISSED, with prejudice,  
2 for failure to state a claim upon which relief may be granted under section 1983. This dismissal is  
3 subject to the “three-strikes” provision set forth in 28 U.S.C. § 1915(g). *Silva v. Di Vittorio*, 658  
4 F.3d 1090, 1098-99 (9th Cir. 2011).

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7 IT IS SO ORDERED.

8 **Dated: May 3, 2013**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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