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

ISRAEL MALDONADO,)	Case No.: 1:12-cv-01824-LJO-SAB (PC)
)	
Plaintiff,)	
)	ORDER DISMISSING COMPLAINT, WITH
v.)	LEAVE TO AMEND, FOR FAILURE TO STATE
)	A COGNIZABLE CLAIM
MEDICAL EMPLOYEES, et al.,)	
)	[ECF No. 5]
Defendants.)	
)	
)	

Plaintiff Israel Maldonado is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff filed the instant complaint on October 23, 2012.

**I.
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 or malicious,” that “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but

1 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
2 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
3 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
4 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
5 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

6 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings
7 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now
8 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive
9 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow
10 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,
11 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer
12 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely
13 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556
14 U.S. at 678; Moss, 572 F.3d at 969.

15 II.

16 COMPLAINT ALLEGATIONS

17 Plaintiff did not consent for his blood to be drawn by a recycled syringe used by the nurse.
18 Plaintiff was in chains and shackles and he noticed that the needle was not clean. Plaintiff asked for a
19 new needle, but the nurse declined to exchange the needle in front of him.

20 III.

21 DISCUSSION

22 A. Deliberate Indifference to a Serious Medical Need

23 Plaintiff’s vague and conclusory allegations fail to rise to the level of a constitutional violation.

24 For Eighth Amendment claims arising out of medical care in prison, Plaintiff “must show (1) a
25 serious medical need by demonstrating that failure to treat [his] condition could result in further
26 significant injury or the unnecessary and wanton infliction of pain,” and (2) that “the defendant’s
27 response to the need was deliberately indifferent.” Wilhelm v. Rotman, 680 F.3d 1113, 1122 (citing
28 Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)). Deliberate indifference is shown by “(a) a

1 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and (b) harm caused
2 by the indifference.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of
3 mind is one of subjective recklessness, which entails more than ordinary lack of due care. Snow v.
4 McDaniel, 681 F.3d 978, 985 (9th Cir. 2012) (citation and quotation marks omitted); Wilhelm, 680
5 F.3d at 1122.

6 In order for Plaintiff to state a cognizable claim, he must amend to link a particular defendant
7 by either name or “Doe” reference, and indicate the nature and extent of any injuries he suffered as a
8 result of the testing. Wilhelm, 680 F.3d at 1122. Accordingly, Plaintiff will be given the opportunity
9 to amend this claim.

10 IV.

11 CONCLUSION AND ORDER

12 For the reasons stated, Plaintiff’s complaint fails to state a claim upon which relief may be
13 granted. Plaintiff is granted leave to file an amended complaint within thirty (30) days. Noll v.
14 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by
15 adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.
16 2007) (no “buckshot” complaints).

17 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
18 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights.
19 Iqbal, 556 U.S. 662, 678. “The inquiry into causation must be individualized and focus on the duties
20 and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a
21 constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as
22 true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level .
23 . . .” Twombly, 550 U.S. at 555 (citations omitted).

24 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana, Inc.,
25 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be
26 “complete in itself without reference to the prior or superseded pleading,” Local Rule 220. “All
27 causes of action alleged in an original complaint which are not alleged in an amended complaint are

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1 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.
2 1981)); accord Forsyth, 114 F.3d at 1474.

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

- 4 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 5 2. Plaintiff’s complaint, filed October 23, 2012, is dismissed for failure to state a claim;
- 6 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
7 amended complaint; and
- 8 4. If Plaintiff fails to file an amended complaint in compliance with this order, this action
9 will be dismissed, with prejudice, for failure to state a claim.

10
11 IT IS SO ORDERED.

12 Dated: **December 11, 2013**



13 UNITED STATES MAGISTRATE JUDGE