



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

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

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

15 The First Amended Complaint names the following officials at the Fresno County  
16 Jail as Defendants: (1) Margaret Mims, Sheriff; (2) Karen Nunez, Registered Nurse; and  
17 (3) Dr. Alfredo Ruvalcaba.

18 Plaintiff alleges the following:

19 On December 13, 2012, Plaintiff, confined in Fresno County Jail, filed an inmate  
20 medical request form seeking treatment for a large and painful growth on his stomach.  
21 (Compl. at 5.) The growth was examined, Plaintiff was prescribed Ibuprofen, and a two  
22 week follow-up appointment was scheduled. By April 9, 2013, five weeks had passed  
23 without further medical attention; Plaintiff filed an inmate grievance and medical care  
24 request. (Id. at 4, 7.) On May 5, 2013, Plaintiff filed a third medical request seeking  
25 treatment. (Id. at 6.)

26 Plaintiff has submitted numerous medical care requests to treat a painful hernia.  
27 He has exhausted the inmate grievance process and still has not received treatment.

1 The Defendants have “delayed, denied, and intentionally interfered” with Plaintiff’s  
2 medical care. (Id. at 3.)

#### 3 **IV. ANALYSIS**

##### 4 **A. Section 1983**

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

10 A complaint must contain “a short and plain statement of the claim showing that  
11 the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
12 are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
13 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct.  
14 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).  
15 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is  
16 plausible on its face.’” Id. Facial plausibility demands more than the mere possibility  
17 that a defendant committed misconduct and, while factual allegations are accepted as  
18 true, legal conclusions are not. Id. at 1949-50.

##### 19 **B. Linkage Requirement**

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

26 The statute requires that there be an actual connection or link between the  
27 actions of the defendants and the deprivation alleged to have been suffered by the  
28 plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978).

1 Government officials may not be held liable for the actions of their subordinates under a  
2 theory of respondeat superior. Iqbal, 129 S.Ct. at 1948. Since a government official  
3 cannot be held liable under a theory of vicarious liability in § 1983 actions, Plaintiff must  
4 plead sufficient facts showing that the official has violated the Constitution through his  
5 own individual actions. Id. at 1948. In other words, to state a claim for relief under §  
6 1983, Plaintiff must link each named defendant with some affirmative act or omission  
7 that demonstrates a violation of Plaintiff's federal rights.

8 The amended complaint fails to link any individual with the alleged denial of  
9 medical care. Plaintiff contends that he has repeatedly been denied treatment for a  
10 serious medical need and that all Defendants are responsible. However, the pleading  
11 provides no description or indication as to how each or any of the Defendants actually  
12 denied Plaintiff treatment or actively participated in that denial.

13 The First Amended Complaint identifies individual Defendants but does not  
14 describe how each of them violated Plaintiff's rights. The mere fact that one or more of  
15 the Defendants may have supervised the individuals responsible for a violation is not  
16 sufficient to state a claim. Defendants may only be held liable in a supervisory capacity  
17 if they "participated in or directed the violations, or knew of the violations and failed to act  
18 to prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

19 The Court previously identified this pleading deficiency and instructed Plaintiff that  
20 to state a claim he must provide a summary of the events underlying the alleged  
21 violations, describe how his rights were violated, and identify the individuals responsible.  
22 The Court will grant Plaintiff **one final** opportunity to amend. To state a claim under §  
23 1983, Plaintiff must "set forth specific facts as to each individual defendant's" deprivation  
24 of protected rights. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988). That is to  
25 say, Plaintiff must explain in his own words exactly how each Defendant contributed to  
26 the denial of medical care. Plaintiff must offer specific examples of misconduct and  
27 avoid overly broad or vague allegations. If Plaintiff cannot describe how each Defendant  
28 violated his rights, the Court will dismiss this action with prejudice.

1           The following section of this order sets out the legal standards the Court believes  
2 may be applicable to Plaintiff's claim.

3           **C.    Eighth Amendment**

4           The Eighth Amendment's prohibition against cruel and unusual punishment  
5 protects prisoners not only from inhumane methods of punishment but also from  
6 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th  
7 Cir. 2006) (citing Farmer v. Brennan, 511 U.S. 825, 847 (1994) and Rhodes v.  
8 Chapman, 452 U.S. 337, 347 (1981)) (quotation marks omitted). While conditions of  
9 confinement may be, and often are, restrictive and harsh, they must not involve the  
10 wanton and unnecessary infliction of pain. Morgan, 465 F.3d at 1045 (citing Rhodes,  
11 452 U.S. at 347) (quotation marks omitted).

12           Prison officials have a duty to ensure that prisoners are provided adequate  
13 shelter, food, clothing, sanitation, medical care, and personal safety, Johnson v. Lewis,  
14 217 F.3d 726, 731 (9th Cir. 2000) (quotation marks and citations omitted), but not every  
15 injury that a prisoner sustains while in prison represents a constitutional violation,  
16 Morgan, 465 F.3d at 1045 (quotation marks omitted). To maintain an Eighth  
17 Amendment claim, inmates must show deliberate indifference to a substantial risk of  
18 harm to their health or safety. Farmer, 511 U.S. at 847.

19           For claims arising out of medical care in prison, Plaintiff "must show [1] a serious  
20 medical need by demonstrating that failure to treat [his] condition could result in further  
21 significant injury or the unnecessary and wanton infliction of pain," and (2) that "the  
22 defendant's response to the need was deliberately indifferent." Wilhelm v. Rotman, 680  
23 F.3d 1113, 1122 (9th Cir. 2012) (citing Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir.  
24 2006)).

25           Deliberate indifference is shown by "(a) a purposeful act or failure to respond to a  
26 prisoner's pain or possible medical need, and (b) harm caused by the indifference." Id.  
27 The requisite state of mind is one of subjective recklessness, which entails more than  
28 ordinary lack of due care. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012) (citation

1 and quotation marks omitted); Wilhelm, 680 F.3d at 1122. Deliberate indifference may  
2 be shown “when prison officials deny, delay or intentionally interfere with medical  
3 treatment, or it may be shown by the way in which prison physicians provide medical  
4 care.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096) (internal quotation  
5 marks omitted).

6 **V. CONCLUSION AND ORDER**

7 Plaintiff’s First Amended Complaint does not state a claim for relief under section  
8 1983. The Court will grant Plaintiff one final opportunity to file an amended complaint.  
9 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff opts to amend, he  
10 must demonstrate that the alleged acts resulted in a deprivation of his constitutional  
11 rights. Iqbal, 129 S.Ct. at 1948-49. Plaintiff must set forth “sufficient factual matter . . .  
12 to ‘state a claim that is plausible on its face.’” Id. at 1949 (quoting Twombly, 550 U.S. at  
13 555 (2007)). **Plaintiff must also demonstrate that each named Defendant**  
14 **personally participated in a deprivation of his rights.** Jones v. Williams, 297 F.3d  
15 930, 934 (9th Cir. 2002).

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

20 Finally, Plaintiff is advised that Local Rule 220 requires that an amended  
21 complaint be complete in itself without reference to any prior pleading. As a general  
22 rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
23 F.2d 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint  
24 no longer serves any function in the case. Therefore, in an amended complaint, as in an  
25 original complaint, each claim and the involvement of each defendant must be  
26 sufficiently alleged. The amended complaint should be clearly and boldly titled “Second  
27 Amended Complaint,” refer to the appropriate case number, and be an original signed  
28 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.

1 8(a). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a  
2 right to relief above the speculative level . . . .” Twombly, 550 U.S. at 555 (citations  
3 omitted).

4 Accordingly, it is HEREBY ORDERED that:

5 1. The Clerk’s Office shall send Plaintiff (1) a blank civil rights complaint form  
6 and (2) a copy of his First Amended Complaint, filed September 12, 2013;

7 2. Plaintiff’s First Amended Complaint is dismissed for failure to state a claim  
8 upon which relief may be granted;

9 3. Plaintiff shall file an amended complaint within thirty (30) days; and

10 4. If Plaintiff fails to file an amended complaint in compliance with this order,  
11 this action will be dismissed, with prejudice, for failure to state a claim and failure to  
12 comply with a court order.

13  
14 IT IS SO ORDERED.

15 Dated: September 27, 2013

1st Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

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