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

<p>ALEJANDRO MADRID,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p style="padding-left: 80px;">v.</p> <p>DEPARTMENT OF CORRECTIONS, et al.,</p> <p style="padding-left: 40px;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No.: 1:14-cv-00516-AWI-BAM (PC)</p> <p>ORDER DENYING MOTIONS FOR THE APPOINTMENT OF COUNSEL (ECF Nos. 23, 24)</p> <p>FINDINGS AND RECOMMENDATIONS REGARDING DISMISSAL OF ACTION FOR FAILURE TO STATE A CLAIM</p> <p>FOURTEEN-DAY DEADLINE</p>
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**Findings and Recommendations**

20 Plaintiff Alejandro Madrid (“Plaintiff”) is a state prisoner proceeding pro se and in forma  
21 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on  
22 October 21, 2013. (ECF No. 1). The action was transferred to this Court on April 11, 2014. (ECF  
23 No. 10). On July 21, 2015, the Court dismissed Plaintiff’s second amended complaint with leave to  
24 amend. (ECF No. 20). On August 17, 2015, Plaintiff filed his third amended complaint. (ECF No.  
25 21).

26 On June 17, 2016, after a delay in screening, Plaintiff filed a motion requesting a response to  
27 his amended complaint, which included a request for the appointment of counsel. (ECF No. 23). As  
28 the Court is now screening Plaintiff’s third amended complaint, his request for a response to the

1 complaint is unnecessary and DENIED as moot. Plaintiff's concurrent motion for the appointment of  
2 counsel is addressed below in greater detail.

3 On September 6, 2016, Plaintiff additionally requested leave to amend his complaint combined  
4 with a request for the appointment of counsel. The Court construes the motion as one for the  
5 appointment of counsel with subsequent leave for counsel to submit an amended complaint. (ECF No.  
6 24). For the reasons discussed below, Plaintiff's motions for the appointment of counsel shall be  
7 denied.

### 8 I. Motions for the Appointment of Counsel

9 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.  
10 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to represent  
11 plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern  
12 District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional  
13 circumstances the court may request the voluntary assistance of counsel pursuant to section  
14 1915(e)(1). Rand, 113 F.3d at 1525.

15 Without a reasonable method of securing and compensating counsel, the court will seek  
16 volunteer counsel only in the most serious and exceptional cases. In determining whether  
17 "exceptional circumstances exist, the district court must evaluate both the likelihood of success on the  
18 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the  
19 legal issues involved." Id. (internal quotation marks and citations omitted).

20 In the present case, the Court does not find the required exceptional circumstances. Plaintiff  
21 has not identified any circumstances warranting the appointment counsel beyond his desire to present  
22 his claims to the Court. However, even if it is assumed that Plaintiff is not well versed in the law and  
23 that he has made serious allegations which, if proved, would entitle him to relief, his case is not  
24 exceptional. This Court is faced with similar cases almost daily. Further, at this early stage in the  
25 proceedings, the Court cannot make a determination that Plaintiff is likely to succeed on the merits,  
26 and based on a review of the record in this case, the Court does not find that Plaintiff cannot  
27 adequately articulate his claims. Id.

1 Based on the foregoing, Plaintiff's motions for the appointment of counsel are DENIED. The  
2 Court now turns to the screening of Plaintiff's third amended complaint.

### 3 **II. Screening Requirement and Standard**

4 The Court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §  
6 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or  
7 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief  
8 from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. §  
9 1915(e)(2)(B)(ii).

10 A complaint must contain "a short and plain statement of the claim showing that the pleader is  
11 entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
12 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
13 do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing Bell  
14 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). While a plaintiff's  
15 allegations are taken as true, courts "are not required to indulge unwarranted inferences." Doe I v.  
16 Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation  
17 omitted).

18 To survive screening, Plaintiff's claims must be facially plausible, which requires sufficient  
19 factual detail to allow the Court to reasonably infer that each named defendant is liable for the  
20 misconduct alleged. Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss v.  
21 United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant  
22 acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the  
23 plausibility standard. Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss, 572  
24 F.3d at 969.

### 25 **III. Plaintiff's Allegations**

26 Plaintiff is currently housed at the Sierra Conservation Center in Jamestown, California. The  
27 events in the complaint allegedly occurred while Plaintiff was housed at Pleasant Valley State Prison  
28 ("PVSP"). Plaintiff names the following defendants: (1) Jeffrey Beard, Secretary of the California

1 Department of Corrections and Rehabilitation (“CDCR”); (2) Dr. Akinoumi Ola; (3) Dr. Ulysis  
2 Baniga; (4) Charles Young, Chief Executive Officer, Health Care Services; (5) L. D. Zamora, Chief  
3 Appeals Coordinator; and (6) the Medical Authorization Review Committee.

4 Jeffrey Beard

5 Plaintiff alleges as follows:

6 Jeffrey Beard is the Secretary of C.D.C. and is responsible for the implement of an  
7 effective medical [treatment] plan for all prisoner[s] within the C.D.C. Jeffrey Beard  
8 failed to ensure an effective medical treatment plan was implemented at [PVSP], because  
9 the medical plan at Pleasant Valley was not adequate to ensure Plaintiff [received] proper  
10 care for his shoulder injury. As a result, Jeffrey Beard[']s treatment plan for prisoners  
11 with serious medical needs was inadequate and deprived Plaintiff his right to adequate  
12 medical care by qualified Drs. This lack of medical procedural safeguards violated the  
13 Constitution[']s Eighth Amendment clause[] which protected Plaintiff from cruel and  
14 unusual punishment. As a result of Jeffrey Beard[']s inadequate medical plan, Plaintiff  
15 suffered intense pain & suffering. Additionally, as a result of Jeffrey Beard[']s  
16 inadequate treatment plan, medical staff were allowed to [overlook] the fact that Plaintiff  
17 had a serious medical need which was diagnosed by at least two surgical physicians as  
18 needing, and/or mandating treatment, as well as proscribing treatment I.E. Tylenol  
19 w/[codeine] for Plaintiff’s pain which was not sufficient to ease Plaintiff’s discomfort,  
20 and significantly affected Plaintiff’s daily activities. Plaintiff could not exercise or  
21 participate in any sports/work.

22 (ECF No. 21 at pp. 3-4).

23 Dr. Ola

24 Plaintiff alleges:

25 Dr. Ola is employed by the Department of Corrections at [PVSP] and is responsible for  
26 the treatment to prisoners with serious medical needs. Dr. Ola knew Plaintiff had a long  
27 history of shoulder complaints spanning over a period of four years wherein at least three  
28 [surgeons] diagnosed and mandated treatment for Plaintiff shoulder injury. Dr. Ola failed  
to follow medical [protocol] in providing sufficient treatment for Plaintiff’s injuries, as  
well as, refused to follow the diagnosis of three surgeons. This failure violated the  
Constitution’s Eight[h] Amendment clause[] of the United States and constituted  
deliberate indifference to Plaintiff’s medical needs which cause severe pain and mental  
anguish. While under Dr. Ola’s care Plaintiff never [received] adequate care or proper  
medication to control Plaintiff’s pain. Additionally, Dr. Ola failed to fully document  
Plaintiff’s shoulder injury and as a result caused Plaintiff’s 602 request for medical care  
to be denied at the highest level. This conduct deprived Plaintiff of his right to adequate  
medical care and violated the Constitution’s [Eighth] Amendment.

(ECF No. 21 at pp. 4-5).

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Dr. Baniga

Plaintiff alleges:

Dr. Baniga is employed by the department of corrections at [PVSP] and is responsible for the treatment to prisoners with serious medical needs. Dr. Baniga knew Plaintiff had a long history of shoulder complaints spanning over a period of 4 years wherein at least three surgeons diagnosed and mandated treatment for Plaintiff’s shoulder injury. Dr. Baniga failed to follow the diagnosis of these three surgeons and his failure violated medical [protocol] because Plaintiff was deprived of his right to adequate medical care. This conduct violated the Eighth Amendment clause[] of the Constitution and constituted deliberate indifference to Plaintiff’s medical needs which resulted in severe pain and mental anguish. During the 602 grievance process Plaintiff was under the care of Dr. Baniga who [chose] to continue in the ineffective medical plan of Dr. Ola, even though he knew Plaintiff complained that the plan was not working. This course of treatment resulted in further pain and suffering and violated Plaintiff[’s] constitutional right to be free from cruel and unusual punishment, and delayed the process for surgery.

(ECF No. 21 at p. 6).

Dr. Young

Plaintiff alleges:

Charles Young is employed by the Department of Corrections at [PVSP] and is responsible for the treatment of prisoners with serious medical needs. Charles Young knew Plaintiff had a long history of shoulder complaints spanning over a period of 4 years wherein at least 3 surgeons diagnosed and mandated treatment for Plaintiff’s shoulder injury. Charles Young failed to follow the diagnosis of these three surgeons and his failure violated medical [protocol] because Plaintiff was ultimately denied his right to adequate medical care. This conduct violated the Eighth Amendment clause[] of the Constitution and constituted deliberate indifference to Plaintiff’s medical needs which resulted in severe pain and mental anguish. During the 602 process Plaintiff was under the care of Charles Young who [chose] to continue the ineffective medical plan of Dr. Ola, even though he knew Plaintiff complained that the plan was not working. This course of treatment resulted in further pain and suffering and violated Plaintiff’s constitutional right to be free from cruel and unusual punishment, and delayed the process for surgery.

(ECF No. 21 at p. 7).

L. D. Zamora

Plaintiff alleges:

L.D. Zamora is employed by the Department of Corrections as Chief of California Correctional Care Services at the third level. His responsibility is to ensure prisoners with serious medical needs [receive] adequate medical care. L.D. Zamora knew Plaintiff had a long history of shoulder complaints spanning over a period of 4 years where at least 3 surgeons diagnosed and mandated treatment for Plaintiff’s shoulder injury. L.D.

1 Zamora failed to follow the diagnosis of these three surgeons therefore his failure  
2 violated medical [protocol] which ultimately denied Plaintiff his right to adequate  
3 medical care. This conduct violated the Eighth Amendment clause[] of the Constitution  
4 and constituted deliberate indifference to Plaintiff's medical needs which caused severe  
5 pain and mental anguish. During the 602 process Plaintiff was under the care of L.D.  
6 Zamora who [chose] to deny Plaintiff's 602 request for medical care and [chose] to  
7 continue the ineffective medical plan of Dr. Ola even though he knew Plaintiff  
8 complained the plan was not working. L.D. Zamor[a']s denial caused further pain and  
9 suffering and violated Plaintiff's right to be free from cruel and unusual punishment, and  
10 the process for surgery.

11 (ECF No. 21 at p. 8).

#### 12 Medical Authorization Review Committee

13 Plaintiff alleges:

14 Each member of the "Medical Authorization Review Committee" are employed by the  
15 Department of Corrections. Their responsibility is to ensure prisoners with surgical  
16 needs are treated in accordance to medical diagnosis and recommendations provided by  
17 surgeons contracted by C.D.C. Each member of the "MAR" committee knew Plaintiff  
18 had a long history of shoulder complaints spanning over a period of 4 years where at least  
19 3 surgeons diagnosed and mandated treatment for Plaintiff's shoulder injury, yet they  
20 refused to follow the recomme[n]dations provided Their conduct violated medical  
21 protocol [sic] which denied Plaintiff his right to adequate medical care. Their conduct  
22 violated the Eighth Amendment Clauses of the Constitution, and constituted deliberate  
23 indifference to Plaintiff's medical needs which caused severe pain and mental anguish.  
24 Their refusal to authorize Plaintiff's surgery resulted in violation of Plaintiff's right to be  
25 free from cruel and unusual punishment, and delayed the process for prisoner surgery.

26 (ECF No. 21 at p. 9).

27 Plaintiff seeks declaratory relief, along with compensatory and punitive damages against the  
28 individual defendants.

### 29 **IV. Discussion**

#### 30 **A. Federal Rule of Civil Procedure 8**

31 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain "a short and plain  
32 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Detailed  
33 factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action,  
34 supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678 (citation omitted).  
35 Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is  
36 plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570, 127 S.Ct. at 1974).

1 While factual allegations are accepted as true, legal conclusions are not. Id.; see also Twombly, 550  
2 U.S. at 556–557.

3 Plaintiff’s third amended complaint is short, but fails to set forth the necessary facts to state a  
4 claim that is plausible on its face. Plaintiff’s complaint lacks basic details, such as what happened,  
5 when it happened and who was involved. Plaintiff’s generalized and conclusory statements and  
6 recitals of the elements of a claim are not sufficient. Despite being provided with the relevant legal  
7 standards, Plaintiff has been unable to cure the Rule 8 deficiencies of his complaint.

### 8 **B. Supervisory Liability**

9 Plaintiff appears to bring suit against Defendant Beard based on his role as supervisor.  
10 However, supervisory personnel may not be held liable under section 1983 for the actions of  
11 subordinate employees based on respondeat superior or vicarious liability. Crowley v. Bannister, 734  
12 F.3d 967, 977 (9th Cir.2013); accord Lemire v. California Dep’t of Corr. and Rehab., 726 F.3d 1062,  
13 1074–75 (9th Cir.2013); Lacey v. Maricopa County, 693 F.3d 896, 915–16 (9th Cir.2012) (en banc).  
14 “A supervisor may be liable only if (1) he or she is personally involved in the constitutional  
15 deprivation, or (2) there is a sufficient causal connection between the supervisor’s wrongful conduct  
16 and the constitutional violation.” Crowley, 734 F.3d at 977 (internal quotation marks omitted); accord  
17 Lemire, 726 F.3d at 1074–75; Lacey, 693 F.3d at 915–16. “Under the latter theory, supervisory  
18 liability exists even without overt personal participation in the offensive act if supervisory officials  
19 implement a policy so deficient that the policy itself is a repudiation of constitutional rights and is the  
20 moving force of a constitutional violation.” Crowley, 734 F.3d at 977 (citing Hansen v. Black, 885  
21 F.2d 642, 646 (9th Cir.1989)) (internal quotation marks omitted).

22 Plaintiff fails to state a cognizable claim against Defendant Beard. Plaintiff has not alleged  
23 that Defendant Beard was personally involved in the constitutional violation. Although Plaintiff  
24 alleges that Defendant Beard implemented a deficient medical treatment plan, Plaintiff does not  
25 identify the plan, explain the deficiencies in the plan or identify how the plan was the moving force  
26 behind any violation of Plaintiff’s constitutional rights. Despite being provided with the relevant legal  
27 standards, Plaintiff has been unable to cure the deficiencies in his claim against Defendant Beard.

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1                                   **C. Grievance Procedure**

2           Plaintiff appears to bring suit against Defendant Zamora based on the denial of Plaintiff’s  
3 inmate appeal. Plaintiff cannot pursue any claims against staff relating to their involvement in the  
4 administrative review of his inmate appeals. The existence of an inmate appeals process does not  
5 create a protected liberty interest upon which Plaintiff may base a claim that he was denied a particular  
6 result or that the appeals process was deficient. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir.2003);  
7 Mann v. Adams, 855 F.2d 639, 640 (9th Cir.1988). To state a claim under section 1983, Plaintiff must  
8 demonstrate personal involvement in the underlying violation of his rights, Iqbal, 556 U.S. at 677;  
9 Jones v. Williams, 297 F.3d 930, 934 (9th Cir.2002), and liability may not be based merely on  
10 Plaintiff’s dissatisfaction with the administrative process or a decision on an appeal, Ramirez, 334  
11 F.3d at 860; Mann, 855 F.2d at 640.

12           Plaintiff fails to state a cognizable claim against Defendant Zamora based on the denial of his  
13 inmate appeal. Plaintiff’s disagreement with the decision on appeal (or the decision of his medical  
14 providers) is not a sufficient basis to impose liability against Defendant Zamora.

15                                   **D. Deliberate Indifference to Serious Medical Needs**

16           “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
17 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096  
18 (9th Cir.2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 291, 50 L.Ed.2d 251  
19 (1976)). The two part test for deliberate indifference requires the plaintiff to show (1) “a ‘serious  
20 medical need’ by demonstrating that failure to treat a prisoner’s condition could result in further  
21 significant injury or the ‘unnecessary and wanton infliction of pain,’” and (2) “the defendant’s  
22 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096; Wilhelm v. Rotman, 680  
23 F.3d 1113, 1122 (9th Cir. 2012).

24           Deliberate indifference is shown where the official is aware of a serious medical need and fails  
25 to adequately respond. Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1018 (9th Cir. 2010).  
26 “Deliberate indifference is a high legal standard.” Simmons, 609 F.3d at 1019; Toguchi v. Chung, 391  
27 F.3d 1051, 1060 (9th Cir. 2004). The prison official must be aware of facts from which he could make  
28



1 an inference that “a substantial risk of serious harm exists” and he must make the inference. Farmer v.  
2 Brennan, 511 U.S. 825, 837, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994).

3 Plaintiff fails to state a cognizable claim for deliberate indifference to serious medical needs  
4 against Defendants Ola, Baniga, and Young. Plaintiff’s allegations against these physicians are  
5 conclusory and lack sufficient factual detail. Plaintiff’s apparent disagreement with his medical  
6 treatment plan and need for surgery is not sufficient to state a constitutional violation. A difference of  
7 opinion between a prisoner and prison medical authorities regarding treatment does not give rise to a  
8 section 1983 claim. Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981); Mayfield v. Craven,  
9 433 F.2d 873, 874 (9th Cir. 1970). Further, Plaintiff’s allegations are conclusory and fail to provide  
10 sufficient factual detail. Indeed, Plaintiff appears to omit prior factual allegations in an effort to state a  
11 cognizable. Despite being provided with the relevant legal standards, Plaintiff has been unable to cure  
12 the deficiencies in his claims against Defendants Ola, Baniga and Young.

#### 13 Medical Authorization Review Committee

14 Plaintiff disagrees with the Medical Authorization Review Committee’s denial of his shoulder  
15 surgery. As noted above, a difference of opinion between a prisoner and prison medical authorities as  
16 to what treatment is proper and necessary does not give rise to section 1983 claim. Mayfield, 433 F.2d  
17 at 874.

### 18 **E. Conclusion and Recommendation**

19 Plaintiff’s complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to state a  
20 cognizable claim. Although Plaintiff has been granted multiple opportunities to cure the deficiencies  
21 in his complaint, he has been unable to do so and further leave to amend is not warranted. Lopez v.  
22 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). Accordingly, it is HEREBY RECOMMENDED that this  
23 action be dismissed for failure to state a cognizable claim upon which relief may be granted under  
24 section 1983.

25 These findings and recommendations will be submitted to the United States District Judge  
26 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**  
27 **days** after being served with these findings and recommendations, Plaintiff may file written objections  
28 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and

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Recommendations.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: November 9, 2016

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE