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

MARK SCHMIDT,	)	Case No.: 1:14-cv-01092-SAB (PC)
	)	
Plaintiff,	)	
	)	ORDER DIRECTING PLAINTIFF TO EITHER
v.	)	FILE AMENDED COMPLAINT OR NOTIFY
	)	COURT OF INTENT TO PROCEED ON CLAIM
RODRIGUES, et al.,	)	FOUND TO BE COGNIZABLE
	)	
Defendants.	)	[ECF No. 19]
	)	
	)	

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

Now pending before the Court is Plaintiff’s first amended complaint, filed February 23, 2015.

**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 names Oscar Rodriguez, Eddie Villanueva, Clayton Nye, Larry Haws, and Jeff  
18 DeCou, as Defendants.

19 On August 8, 2013, Plaintiff was performing his duties under the authority of the Defendants  
20 in the furniture factory within Avenal State Prison. As he was cleaning the rollers on the glue  
21 machine, the machine “glitched” causing it to switch into run-mode. Plaintiff’s left hand was grabbed  
22 and lodged between the rollers.

23 Medical staff from the prison was dispatched to the scene, and Plaintiff was transported to the  
24 prison’s main infirmary. Plaintiff was subsequently transported to an outside medical facility.  
25 Plaintiff’s injuries included a crushed left hand, and torn skin on index finger, middle finger and  
26 thumb.

27 On August 14, 2013, surgery was performed, and approximately 120 days later, it was  
28 determined that amputation surgery was necessary.



1 834. A prison official is “deliberately indifferent” if the official acted or failed to act despite his  
2 knowledge of a substantial risk of serious harm. Id. at 842.

3 “More specifically, the Eighth Amendment is implicated in the prison work context only when  
4 a prisoner employee alleges that a prison official compelled him to ‘perform physical labor which was  
5 beyond his strength, endangered his life or health, or caused undue pain.’” Morgan v. Morengensen,  
6 465 F.3d 1041, 1045 (9th Cir. 2006) (quoting Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994)  
7 (per curiam)) (alterations omitted).

8 Based on Plaintiff’s allegations in the amended complaint, Plaintiff states a cognizable claim  
9 for cruel and unusual punishment against Defendants Eddie Villanueba, Clayton Nye, Larry Haws,  
10 and Jeff DeCou.

11 **B. Supervisory Liability**

12 Plaintiff names Oscar Rodriguez, Administrator of the California Prison Industry Authority at  
13 Avenal State Prison, as a Defendant in this action.

14 Under section 1983, Plaintiff must prove that the defendants holding supervisory positions  
15 personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.  
16 2002). There is no respondeat superior liability, and each defendant is only liable for his or her own  
17 misconduct. Iqbal, at 1948-49. A supervisor may be held liable for the constitutional violations of his  
18 or her subordinates only if he or she “participated in or directed the violations, or knew of the  
19 violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989);  
20 Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark County School Board of  
21 Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir.  
22 1997).

23 Plaintiff’s complaint is devoid of any allegations supporting the existence of a supervisory  
24 liability claim against Defendant Oscar Rodriguez. The only basis for such a claim would be  
25 respondeat superior, which is precluded under section 1983.

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1 IV.

2 CONCLUSION AND ORDER

3 Plaintiff's complaint states a cognizable claim against Defendants Eddie Villanueba, Clayton  
4 Nye, Larry Haws, and Jeff DeCou for deliberate indifference to Plaintiff's safety in violation of the  
5 Eighth Amendment. Plaintiff has not sufficiently alleged facts for any other claims against any of the  
6 other named Defendants. The Court will provide Plaintiff with the opportunity to file an amended  
7 complaint curing the deficiencies identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446,  
8 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding new, unrelated  
9 claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot"  
10 complaints).

11 If Plaintiff does not wish to file an amended complaint and is agreeable to proceeding only on  
12 the claim for deliberate indifference against Defendants Eddie Villanueba, Clayton Nye, Larry Haws,  
13 and Jeff DeCou, Plaintiff may so notify the Court in writing, and the Court will dismiss the other the  
14 other claim and Defendant, and will forward Plaintiff four (4) summonses and four (4) USM-285  
15 forms for completion and return. Upon receipt of the forms, the Court will direct the United States  
16 Marshal to initiate service of process.

17 If Plaintiff opts to amend, his amended complaint should be brief. Fed. R. Civ. P. 8(a).  
18 Plaintiff must identify how each individual defendant caused the deprivation of Plaintiff's  
19 constitutional or other federal rights: "The inquiry into causation must be individualized and focus on  
20 the duties and responsibilities of each individual defendant whose acts or omissions are alleged to  
21 have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). With  
22 respect to exhibits, while they are permissible if incorporated by reference, Fed. R. Civ. P. 10(c), they  
23 are not necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). In other words, it is  
24 not necessary at this stage to submit evidence to prove the allegations in Plaintiff's complaint because  
25 at this stage Plaintiff's factual allegations will be accepted as true.

26 Although Plaintiff's factual allegations will be accepted as true and "the pleading standard  
27 Rule 8 announces does not require 'detailed factual allegations,'" "a complaint must contain sufficient  
28 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v.

1 Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).  
2 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
3 the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (citing Twombly,  
4 550 U.S. at 556).

5 Plaintiff is advised that an amended complaint supersedes the original complaint. Forsyth v.  
6 Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).  
7 The amended complaint must be “complete in itself without reference to the prior or superseded  
8 pleading.” Local Rule 220. Plaintiff is warned that “[a]ll causes of action alleged in an original  
9 complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d at 567 (citing  
10 London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474.  
11 In other words, even the claims that were properly stated in the original complaint must be completely  
12 stated again in the amended complaint. Finally, Plaintiff is advised that, should he choose to amend,  
13 he may not bring unrelated claims in the same action.

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

- 15 1. The Clerk’s Office shall send Plaintiff an amended civil rights complaint form;
- 16 2. Within thirty (30) days from the date of service of this order, Plaintiff must either:
  - 17 a. File an amended complaint curing the deficiencies identified by the Court in this  
18 order, or
  - 19 b. Notify the Court in writing that he does not wish to file an amended complaint  
20 and wishes to proceed only against Defendants Eddie Villanueba, Clayton Nye,  
21 Larry Haws, and Jeff DeCou for deliberate indifference to Plaintiff’s safety in  
22 violation of the Eighth Amendment; and

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3. If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court order.

IT IS SO ORDERED.

Dated: March 3, 2015



UNITED STATES MAGISTRATE JUDGE