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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JESUS ZAVALA MOTTA,

12 Plaintiff,

13 v.

14 MARGARETTE MIMS, et al.,

15 Defendants.
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1:14-cv-01108-GSA-PC

**ORDER DISMISSING CASE FOR
FAILURE TO STATE A CLAIM
(ECF No. 9.)**

**ORDER THAT THIS DISMISSAL IS
SUBJECT TO THE “THREE-STRIKES”
PROVISION SET FORTH IN 28 U.S.C. §
1915(g).**

ORDER FOR CLERK TO CLOSE CASE

21 Jesus Zavala Motta (“Plaintiff”) is a Fresno County Jail inmate proceeding pro se with
22 this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing
23 this action on July 16, 2014. (ECF No. 1.)¹ The court screened the Complaint under 28 U.S.C.
24 § 1915A and issued an order on June 9, 2015, dismissing the Complaint for failure to state a
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26 ¹ On July 24, 2014, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant
27 to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 5.) Therefore, pursuant to
28 Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any and
all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix
A(k)(3).

1 claim, with leave to amend. (ECF No. 6.) On June 29, 2015, Plaintiff filed the First Amended
2 Complaint. (ECF No. 7.) On May 12, 2016, the court dismissed the First Amended Complaint
3 for failure to state a claim, with leave to amend. (ECF No. 8.) On June 7, 2016, Plaintiff filed
4 the Second Amended Complaint, which is now before the court for screening. (ECF No. 9.)

5 **I. SCREENING REQUIREMENT**

6 The Court is required to screen complaints brought by prisoners seeking relief against a
7 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
8 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
9 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
10 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
11 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
12 paid, the court shall dismiss the case at any time if the court determines that the action or
13 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

14 A complaint is required to contain “a short and plain statement of the claim showing
15 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
16 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
17 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
18 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are
19 taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart
20 Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).
21 To state a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to
22 ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S.
23 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as
24 true, legal conclusions are not. Id. The mere possibility of misconduct falls short of meeting
25 this plausibility standard. Id.

26 **II. ALLEGATIONS IN THE SECOND AMENDED COMPLAINT**

27 Plaintiff is presently incarcerated at the Fresno County Jail in Fresno, California, where
28 the events at issue allegedly occurred. Plaintiff names as defendants Fresno County Sheriff

1 Margarette (*sic*) Mims, Correctional Officer (C/O) Vermason, C/O Bruton, and Dr. Thomas.
2 Plaintiff's allegations in the Second Amended Complaint follow, in their entirety.

3 The Fresno Co. Jail violated my right to receive medical care by not allowing
4 me to change my colonoscopy bag and leaving me with feces on my body for
5 days. On May 15, 2014, Officer Vermason did not allow me to go to medical to
6 change my colonoscopy bag. Then on May 19th Officer Bruton did not allow
7 me to change my colostomy bag by leaving me in a holding cell. Also Dr.
8 Thomas who was the head doctor in charge of the medical department, so she is
9 in charge and Margrette (*sic*) Mims is responsible because she is the head
10 sheriff.

11 Plaintiff requests monetary damages as relief.

12 **III. PLAINTIFF'S MEDICAL CLAIM**

13 The Civil Rights Act under which this action was filed provides:

14 Every person who, under color of any statute, ordinance, regulation, custom, or
15 usage, of any State or Territory or the District of Columbia, subjects, or causes
16 to be subjected, any citizen of the United States or other person within the
17 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
18 secured by the Constitution and laws, shall be liable to the party injured in an
19 action at law, suit in equity, or other proper proceeding for redress

20 42 U.S.C. § 1983

21 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a
22 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,
23 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman
24 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697
25 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);
26 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

27 **A. Personal Participation – Defendants Mims and Dr. Thomas**

28 Under § 1983, Plaintiff must link the named defendants to their participation in the
violation at issue. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d 1011,
1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones
v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Liability may not be imposed under a theory of
respondeat superior, and there must exist some causal connection between the conduct of each
named defendant and the violation at issue. Iqbal, 556 U.S. at 676-77; Lemire v. California

1 Dep't of Corr. and Rehab., 726 F.3d 1062, 1074-75(9th Cir. 2013); Lacey v. Maricopa County,
2 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc); Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir.
3 2011), *cert. denied*, 132 S.Ct. 2101 (2012).

4 As with Plaintiff's prior complaints, Plaintiff fails to state how defendant Mims
5 participated in the violations at issue. Plaintiff also fails to allege any causal connection
6 between defendant Dr. Thomas and the violation of Plaintiff's rights. Therefore, Plaintiff fails
7 to state any claims in the Second Amended Complaint against defendants Mims or Thomas.

8 **B. Medical Claim – Eighth Amendment**

9 The Eighth Amendment's prohibition against cruel and unusual punishment protects
10 prisoners not only from inhumane methods of punishment but also from inhumane conditions
11 of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer v.
12 Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994) and Rhodes v. Chapman, 452 U.S. 337,
13 347, 101 S.Ct. 2392 (1981)) (quotation marks omitted). While conditions of confinement may
14 be, and often are, restrictive and harsh, they must not involve the wanton and unnecessary
15 infliction of pain. Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347) (quotation marks
16 omitted).

17 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,
18 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731
19 (9th Cir. 2000) (quotation marks and citations omitted), but not every injury that a prisoner
20 sustains while in prison represents a constitutional violation, Morgan, 465 F.3d at 1045
21 (quotation marks omitted). To maintain an Eighth Amendment claim, inmates must show
22 deliberate indifference to a substantial risk of harm to their health or safety. E.g., Farmer, 511
23 U.S. at 847; Thomas v. Ponder, 611 F.3d 1144, 1151-52 (9th Cir. 2010); Foster v. Runnels, 554
24 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731; Frost v.
25 Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

26 While the Eighth Amendment of the United States Constitution entitles Plaintiff to
27 medical care, the Eighth Amendment is violated only when a prison official acts with deliberate
28 indifference to an inmate's serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th

1 Cir. 2012), *overruled in part on other grounds*, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th
2 Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d
3 1091, 1096 (9th Cir. 2006). Plaintiff “must show (1) a serious medical need by demonstrating
4 that failure to treat [his] condition could result in further significant injury or the unnecessary
5 and wanton infliction of pain,” and (2) that “the defendant’s response to the need was
6 deliberately indifferent.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d 1091, 1096 (9th Cir.
7 2006)). Deliberate indifference is shown by “(a) a purposeful act or failure to respond to a
8 prisoner’s pain or possible medical need, and (b) harm caused by the indifference.” Wilhelm,
9 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective
10 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985
11 (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122.

12 Here, Plaintiff states that he made several medical requests that were not granted, and
13 he was left for days with feces on his body; however, Plaintiff fails to make a showing that any
14 named Defendant acted with the requisite state of mind.

15 Plaintiff has therefore failed to state a deliberate indifference claim against any named
16 Defendant.

17 **V. CONCLUSION AND ORDER**

18 The court finds that Plaintiff’s Second Amended Complaint fails to state any cognizable
19 claims upon which relief may be granted under § 1983. The court previously granted Plaintiff
20 leave to amend the initial Complaint and the First Amended Complaint, with ample guidance
21 by the court. Plaintiff has now filed three complaints without stating any claims upon which
22 relief may be granted under § 1983. The court finds that the deficiencies outlined above are not
23 capable of being cured by amendment, and therefore further leave to amend should not be
24 granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

25 Therefore, based on the foregoing, **IT IS HEREBY ORDERED** that:

- 26 1. This case is DISMISSED, with prejudice, for failure to state a claim upon which
27 relief may be granted under § 1983;

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2. This dismissal is subject to the “three-strikes” provision set forth in 28 U.S.C. § 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011); and

3. The Clerk is ordered to CLOSE this case.

IT IS SO ORDERED.

Dated: February 28, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE