

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

10 GORDON D. MEADOR, Case No. 1:14-cv-02013-SKO (PC)

11 Plaintiff,  
12 v.  
13 SMITH & WESSEN, et al.,  
14 Defendants.  
SCREENING ORDER DISMISSING CDCR,  
WITH PREJUDICE, AND DISMISSING  
COMPLAINT, WITH LEAVE TO AMEND,  
FOR FAILURE TO STATE A CLAIM  
(Doc. 1)

## 16 | I. Screening Requirement and Standard

17 Plaintiff Gordon D. Meador, a state prisoner proceeding pro se and in forma pauperis, filed  
18 this civil rights action pursuant to 42 U.S.C. § 1983 on December 18, 2014. The Court is required  
19 to screen complaints brought by prisoners seeking relief against a governmental entity or an  
20 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a  
21 complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or  
22 malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief  
23 from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).  
24 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
25 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
26 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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

1 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
2 conclusory statements, do not suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937  
3 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and  
4 courts “are not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572  
5 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual  
6 allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678.

7 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings  
8 liberally construed and to have any doubt resolved in their favor, *Hebbe v. Pliler*, 627 F.3d 338,  
9 342 (9th Cir. 2010) (citations omitted), but nevertheless, the mere possibility of misconduct falls  
10 short of meeting the plausibility standard, *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

11 **II. Discussion**

12 **A. Summary of Claim**

13 Plaintiff filed suit pursuant to section 1983 “and personal injury.” (Doc. 1, Comp., p. 1.)  
14 Plaintiff seeks damages for an injury to his right arm sustained on May 24, 2014, when a security  
15 guard at San Joaquin Community Hospital cut a broken handcuff from his wrist with bolt cutters.  
16 Plaintiff alleges that his upper arm was cut deeply, exposing bone, and leaving him with  
17 permanent numbness and a scar. Plaintiff names Smith & Wesson,<sup>1</sup> Handcuff Company; San  
18 Joaquin Community Hospital; California Department of Corrections and Rehabilitation; John Doe  
19 #1, Security Officer; a Doe Correctional Officers, Doe Correctional Sergeant; and additional Does  
20 as defendants.

21 **B. Section 1983 Claim**

22 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or  
23 other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d  
24 1087, 1092 (9th Cir 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006);  
25 *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). “Section 1983 is not itself a source of  
26 substantive rights, but merely provides a method for vindicating federal rights elsewhere  
27 conferred.” *Crowley v. Nevada ex rel. Nevada Sec’y of State*, 678 F.3d 730, 734 (9th Cir. 2012)

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28 <sup>1</sup> Identified as Smith & Wessen in the complaint.

1 (citing *Graham v. Connor*, 490 U.S. 386, 393-94, 109 S.Ct. 1865 (1989)) (internal quotation  
2 marks omitted). To state a claim, Plaintiff must allege facts demonstrating the existence of a link,  
3 or causal connection, between each defendant's actions or omissions and a violation of his federal  
4 rights. *Lemire v. California Dep't of Corr. and Rehab.*, 726 F.3d 1062, 1074-75 (9th Cir. 2013);  
5 *Starr v. Baca*, 652 F.3d 1202, 1205-08 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101 (2012).

6 Plaintiff's complaint fails to state a viable claim under section 1983 for several different  
7 reasons. First, Plaintiff must identify a federal right at issue to proceed under section 1983. Since  
8 Plaintiff is a convicted prisoner and the Eighth Amendment protects against harm to inmates'  
9 health or safety, the Court will construe his section 1983 claim as brought for violation of the  
10 Eighth Amendment. *Farmer v. Brennan*, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994); *Johnson v.*  
11 *Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). However, an Eighth Amendment claim will lie only if  
12 the defendants acted with deliberate indifference to a substantial risk of harm to Plaintiff, and  
13 Plaintiff's allegations do not support such a claim. *E.g.*, *Farmer*, 511 U.S. at 847; *Thomas v.*  
14 *Ponder*, 611 F.3d 1144, 1150-51 (9th Cir. 2010); *Foster v. Runnels*, 554 F.3d 807, 812-14 (9th  
15 Cir. 2009); *Johnson*, 217 F.3d at 731; *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998). At  
16 best, Plaintiff's allegations indicate the possibility of negligence by the security officer who cut off  
17 the handcuffs, and negligence is not redressable under the Eighth Amendment. *Hearns v.*  
18 *Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005).

19 In addition, section 1983 provides redress for violations committed under color of state  
20 law. *Nurre*, 580 F.3d at 1092 (citing *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997)).  
21 The only defendant actually linked to an alleged violation of Plaintiff's rights is the hospital  
22 security guard, and the presumption is that "conduct by private actors is not state action." *Florer*  
23 *v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 922 (9th Cir. 2011). Plaintiff's complaint  
24 contains no facts which would support a finding that the hospital security guard was acting under  
25 color of state law when he removed Plaintiff's broken handcuffs.<sup>2</sup>

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<sup>2</sup> Similarly, Plaintiff's complaint contains no facts supporting a basis for suit against Smith & Wesson or San Joaquin  
28 Community Hospital under section 1983, notwithstanding his even broader failure to link either defendant to actions  
or omissions which would support a claim under any legal theory.

1       Finally, in no event may Plaintiff sue the California Department of Corrections and  
2 Rehabilitation (“CDCR”) in federal court. CDCR is entitled to Eleventh Amendment immunity  
3 from suit as a matter of law and it shall be dismissed from this action, with prejudice. *E.g.*,  
4 *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100, 104 S.Ct. 900 (1984);  
5 *Buckwalter v. Nevada Bd. of Medical Examiners*, 678 F.3d 737, 740 n.1 (9th Cir. 2012); *Wolfson*  
6 *v. Brammer*, 616 F.3d 1045, 1065-66 (9th Cir. 2010).

7       **C.     State Law Negligence Claim**

8       Plaintiff also alleges a claim for “personal injury.” (Comp., p. 1.) Based on this allegation  
9 and given the description of events, it appears Plaintiff may be alleging a claim for negligence  
10 under California law. However, the “plain language” of 28 U.S.C. § 1337(a) “makes clear that  
11 supplemental jurisdiction may only be invoked when the district court has the hook of original  
12 jurisdiction on which to hang it.” *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802,  
13 805 (9th Cir. 2001). Thus, where, as here, there is no viable federal claim, the Court lacks  
14 jurisdiction over any state law tort claims, notwithstanding the existence of additional deficiencies  
15 with the claim.<sup>3</sup>

16       **III.    Conclusion and Order**

17       Plaintiff’s complaint fails to state a claim under section 1983. In an abundance of caution,  
18 the Court will provide Plaintiff with one opportunity to file an amended complaint curing the  
19 identified deficiencies. *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012); *Lopez v. Smith*,  
20 203 F.3d 1122, 1130 (9th Cir. 2000); *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987).  
21 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended

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22       <sup>3</sup> “Under California law, ‘[t]he elements of negligence are: (1) defendant’s obligation to conform to a certain standard  
23 of conduct for the protection of others against unreasonable risks (duty); (2) failure to conform to that standard  
24 (breach of duty); (3) a reasonably close connection between the defendant’s conduct and resulting injuries (proximate  
25 cause); and (4) actual loss (damages).’” *Corales v. Bennett*, 567 F.3d 554, 572 (9th Cir. 2009) (quoting *McGarry v. Sax*, 158 Cal.App.4th 983, 994, 70 Cal.Rptr.3d 519 (2008) (internal quotations omitted)). Plaintiff’s complaint also  
26 fails to set forth sufficient facts to support a viable negligence claim; and with respect to public entities or their  
27 employees, such as CDCR staff, Plaintiff fails to allege compliance with the Government Claims Act. Cal. Gov’t  
28 Code §§ 905.2, 910, 911.2, 945.4, 950, 950.2 (West 2015). Presentation of a written claim and action on or rejection  
of the claim are conditions precedent to suit; compliance with the prison appeals process does not suffice. *Shirk v. Vista Unified Sch. Dist.*, 42 Cal.4th 201, 208-09 (Cal. 2007); *State v. Superior Court of Kings Cnty. (Bodde)*, 32  
Cal.4th 1234, 1239 (Cal. 2004); *Mabe v. San Bernardino Cnty. Dep’t of Pub. Soc. Servs.*, 237 F.3d 1101, 1111 (9th  
Cir. 2001); *Mangold v. California Pub. Utils. Comm’n*, 67 F.3d 1470, 1477 (9th Cir. 1995).

1 complaint, *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007), and Plaintiff is cautioned that an  
2 amended complaint supercedes the original complaint, *Lacey v. Maricopa County*, 693 F.3d 896,  
3 907 (9th Cir. 2012) (en banc), and it must be “complete in itself without reference to the prior or  
4 superceded pleading,” Local Rule 220.

5 Accordingly, it is HEREBY ORDERED that:

- 6 1. The California Department of Corrections and Rehabilitation is dismissed from this  
7 action, with prejudice, on the ground of Eleventh Amendment immunity;
- 8 2. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a claim;
- 9 3. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 10 4. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
11 amended complaint; and
- 12 5. If Plaintiff fails to file an amended complaint in compliance with this order, this  
13 action will be dismissed, with prejudice, for failure to state a claim.

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15 IT IS SO ORDERED.

16 Dated: June 2, 2015

17 /s/ Sheila K. Oberto  
18 UNITED STATES MAGISTRATE JUDGE

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