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

CESAR MENDOZA-HERNANDEZ,  
Plaintiff,  
v.  
D. COGGINS, et al.,  
Defendants.

Case No. 1:15-cv-00271-SKO (PC)  
ORDER DISMISSING AMENDED  
COMPLAINT AND RESPONSES, WITH  
LEAVE TO AMEND, FOR FAILURE TO  
STATE A CLAIM  
(Docs. 5, 9, and 10)

**Screening Order**

**I. Screening Requirement and Standard**

Plaintiff Cesar Mendoza-Hernandez, a federal prisoner proceeding pro se and in forma pauperis, filed this civil action on August 8, 2014, in the United States District Court for the Northern District of Texas, Dallas Division. (Doc. 1.) On February 19, 2015, the district court severed Plaintiff’s claims against Defendants Coggins, Franco, Scott, and Andrews, which arose from events at United States Penitentiary-Atwater, and transferred that portion of the action to this court. (Doc. 13.)

The Court is required to screen Plaintiff’s complaint and dismiss the case, in whole or in part, if the Court determines it fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). 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 “[t]hreadbare recitals of the elements of a cause of action, supported by mere

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

6 Pro se litigants are entitled to have their pleadings liberally construed and to have any  
7 doubt resolved in their favor, *Wilhelm v. Rotman*, 680 F.3d 1113, 1121-23 (9th Cir. 2012); *Hebbe*  
8 *v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010), but Plaintiff’s claims must be facially plausible to  
9 survive screening, which requires sufficient factual detail to allow the Court to reasonably infer  
10 that each named defendant is liable for the misconduct alleged, *Iqbal*, 556 U.S. at 678 (quotation  
11 marks omitted); *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer  
12 possibility that a defendant acted unlawfully is not sufficient, and mere consistency with liability  
13 falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678 (quotation marks  
14 omitted); *Moss*, 572 F.3d at 969.

15 **II. Discussion**

16 **A. Summary of Allegations**

17 Plaintiff is currently incarcerated at FCI Phoenix in Phoenix, Arizona. Plaintiff filed an  
18 amended complaint on September 15, 2014, in which he alleged claims for the abuse of his human  
19 rights against the Federal Bureau of Prisons. (Doc. 5.) In response to the “United States  
20 Magistrate Judge’s Questionnaire,” filed on September 23, 2014, Plaintiff filed two responses on  
21 October 14, 2014, and November 12, 2014. (Docs. 7, 9, 10.) In those responses, Plaintiff alleges  
22 that on September 18, 2012, Defendants Coggins, Scott, and Andrews altered his records at USP-  
23 Atwater by falsifying the name and address of an emergency contact. (Doc. 9, pp. 2, 4; Doc. 10,  
24 p. 1.) On March 22, 2013, Defendant Franco allegedly discriminated against Plaintiff and kicked  
25 him out of the medical department for no reason. As a result, Plaintiff was unable to go to the  
26 hospital for testing. (*Id.*)

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1           **B.       Bivens Claim Deficiencies**

2           Plaintiff is a federal prisoner and it appears he is bringing suit pursuant to *Bivens v. Six*  
3 *Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S.Ct. 1999 (1971),  
4 which, under limited circumstances, provides a remedy for violation of civil rights by federal  
5 actors. *Minneci v. Pollard*, \_\_\_ U.S. \_\_\_, \_\_\_, 132 S.Ct. 617, 621 (2012). However, Plaintiff may not  
6 sue the Federal Bureau of Prison because a *Bivens* action may not be brought against a federal  
7 agency. *FDIC v. Meyer*, 510 U.S. 471, 486, 114 S.Ct. 996 (1994).

8           Plaintiff may sue individual prison employees for damages under *Bivens*, but he must link  
9 each named defendant to a violation of his constitutional rights; there is no *respondeat superior*  
10 liability under *Bivens*. *Iqbal*, 556 U.S. at 676-77; *Starr v. Baca*, 652 F.3d 1202, 1205-08 (9th Cir.  
11 2011), *cert. denied*, 132 S.Ct. 2101 (2012); *Serra v. Lappin*, 600 F.3d 1191, 1200 (9th Cir. 2010).  
12 Here, Plaintiff's vague allegation of a falsified emergency contact does not state a claim for relief  
13 against Defendants Coggins, Scott, and Andrews. Assuming such a claim would be grounded in  
14 the Due Process Clause, Plaintiff has not identified the existence of any protected liberty interest  
15 with respect to his emergency contact information. *Wilkinson v. Austin*, 545 U.S. 209, 221, 125  
16 S.Ct. 2384 (2005); *Hernandez v. Johnston*, 833 F.2d 1316, 1319 (9th Cir. 1987).

17           Next, Plaintiff's conclusory allegation of discrimination and interference with medical care  
18 also fails to state a claim for relief against Defendant Franco. The Equal Protection Clause  
19 requires that persons who are similarly situated be treated alike. *City of Cleburne v. Cleburne*  
20 *Living Center, Inc.*, 473 U.S. 432, 439, 105 S.Ct. 3249 (1985); *Hartmann v. California Dep't of*  
21 *Corr. & Rehab.*, 707 F.3d 1114, 1123 (9th Cir. 2013); *Furnace v. Sullivan*, 705 F.3d 1021, 1030  
22 (9th Cir. 2013); *Shakur v. Schriro*, 514 F.3d 878, 891 (9th Cir. 2008). To state a claim, Plaintiff  
23 must show that Defendant Franco intentionally discriminated against him based on his  
24 membership in a protected class. *Hartmann*, 707 F.3d at 1123; *Furnace*, 705 F.3d at 1030;  
25 *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003); *Lee v. City of Los Angeles*, 250 F.3d 668,  
26 686 (9th Cir. 2001).

27           While respect to medical care, the Eighth Amendment is violated only when a prison  
28 official acts with deliberate indifference to an inmate's serious medical needs. *Snow v. McDaniel*,

1 681 F.3d 978, 985 (9th Cir. 2012), *overruled in part on other grounds, Peralta v. Dillard*, 744  
2 F.3d 1076, 1082-83 (9th Cir. 2014); *Wilhelm*, 680 F.3d at 1122; *Jett v. Penner*, 439 F.3d 1091,  
3 1096 (9th Cir. 2006). The requisite state of mind is one of subjective recklessness, which entails  
4 more than ordinary lack of due care, *Snow*, 681 F.3d at 985 (citation and quotation marks  
5 omitted); *Wilhelm*, 680 F.3d at 1122, and medical malpractice does not become a constitutional  
6 violation merely because the victim is a prisoner, *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct.  
7 285 (1977) (quotation marks omitted); *Snow*, 681 F.3d at 987-88; *Wilhelm*, 680 F.3d at 1122.

### 8 **III. Conclusion and Order**

9 Plaintiff's amended complaint and responses fail to state a claim upon which relief may be  
10 granted. The Court will provide Plaintiff with an opportunity to file a second amended complaint,  
11 assuming he believes in good faith he can cure the deficiencies identified. *Akhtar v. Mesa*, 698  
12 F.3d 1202, 1212-13 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Plaintiff  
13 may not add new claims or parties, and he is limited to amending his claims against staff at USP-  
14 Atwater.<sup>1</sup> *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

15 Plaintiff's second amended complaint should be brief, but it must state the factual bases for  
16 Plaintiff's claims against the named defendants. Fed. R. Civ. P. 8(a); *Hebbe*, 627 F.3d at 342; *Doe*  
17 *I*, 572 F.3d at 681. Plaintiff must allege facts demonstrating the individual involvement of each  
18 named defendant in the violation of his rights, *Iqbal*, 556 U.S. at 676-77, and although accepted as  
19 true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative  
20 level. . . ." *Twombly*, 550 U.S. at 555 (citations omitted). Finally, the amended complaint will  
21 supersede the original complaint, *Lacey v. Maricopa County*, 693 F.3d 896, 907 n.1 (9th Cir.  
22 2012) (en banc), and it must be "complete in itself without reference to the prior or superceded  
23 pleading," Local Rule 220.

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27 <sup>1</sup> Plaintiff's unrelated claims may be subject to further severance but given Plaintiff's failure to state any cognizable  
28 claims, the Court will defer any determination regarding the propriety of further severance until it reviews the second  
amended complaint. Fed. R. Civ. P. 18(a), 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George*,  
507 F.3d at 607.

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Accordingly, it is HEREBY ORDERED that:

1. Plaintiff's amended complaint and responses are dismissed, with leave to amend, for failure to state a claim;
2. The Clerk's Office shall send Plaintiff a *Bivens* complaint form;
3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a second amended complaint; and
4. If Plaintiff fails to file a second amended complaint in compliance with this order, this action will be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Dated: March 16, 2015

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE