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

JON L. NYLAND,  
  
                                Plaintiff,  
  
                                v.  
  
CALAVERAS COUNTY SHERIFF’S JAIL,  
et al.,  
  
                                Defendants.

Case No. 1:15-cv-00886 DLB PC  
  
**ORDER DISMISSING FIRST AMENDED  
COMPLAINT WITHOUT LEAVE TO  
AMEND AND DISMISSING ACTION WITH  
PREJUDICE**

Plaintiff Jon L. Nyland (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on June 11, 2015.<sup>1</sup> On July 17, 2015, the Court screened the complaint and dismissed it for failure to state a claim with leave to file an amended complaint. On July 24, 2015, Plaintiff filed a First Amended Complaint. He names Nurse Joy Lynch, Doctor McKay, Correctional Officers Keith Vincent, Mattos, and Manning, and Sergeant John Bailey as Defendants.

**A.     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

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<sup>1</sup> On June 18, 2015, Plaintiff consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c).

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
3 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
4 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
5 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 A complaint must contain “a short and plain statement of the claim showing that the pleader  
7 is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
8 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
9 do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly,  
10 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to  
11 ‘state a claim that is plausible on its face.’” Id. (quoting Twombly, 550 U.S. at 555). While factual  
12 allegations are accepted as true, legal conclusions are not. Id.

13 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other  
14 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092  
15 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.  
16 Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions or  
17 omissions of each named defendant to a violation of his rights; there is no respondeat superior  
18 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d  
19 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);  
20 Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a plausible claim  
21 for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).  
22 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S.  
23 at 678; Moss, 572 F.3d at 969.

24 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

25 Plaintiff was detained at Calaveras County Jail pending trial on unidentified charges at the  
26 time the events giving rise to this action occurred. He is currently incarcerated at Deuel Vocational  
27 Institution.

28 Plaintiff states that he suffers from mental illness. He complains that the nurse failed to

1 screen him when he was first booked into jail on May 13, 2015. On June 2, 2015, Plaintiff grieved  
2 to Defendant Bailey concerning his mental health. Defendant Bailey advised him that he was on the  
3 list to see mental health and a doctor. Plaintiff was given a medical slip. On June 5, 2015, he was  
4 seen by a mental health worker who advised him that he would be getting lithium and anti-psychotic  
5 medication. On June 10, 2015, Plaintiff grieved again because his symptoms had gotten worse. On  
6 June 13, 2015, he was seen by Defendant Dr. McKay. Defendant McKay gave Plaintiff a mood  
7 stabilizer. Plaintiff complained that the doctor misdiagnosed him and should have given him anti-  
8 psychotic drugs. Plaintiff was advised he could obtain a second opinion if he could pay for it.  
9 Plaintiff grieved to the second level and complained that the doctor did not ask for his symptoms or  
10 read his medical records. He grieved all issues to the Sheriff on July 2, 2015, and the Sheriff  
11 responded that he trusts his staff at the jail.

12 On July 6, 2015, Plaintiff was advised by mental health worker Brenda Hawley that in order  
13 to be released from the safety cell, he would have to sign an agreement for his safety and the safety  
14 of other inmates that he needed to push the emergency call button in the common area or his cell to  
15 inform staff of problems.

16 After being locked down by Correctional Officer Vincent, Plaintiff choked himself. He  
17 complained of injuries to Vincent, but Vincent must have assumed Plaintiff was blaming him for his  
18 injuries. Plaintiff was having difficulty breathing and had hurt his neck when he fell. He pushed the  
19 button but there was no immediate response. Correctional Officer Mattos passed by and Plaintiff  
20 stopped her. Plaintiff was then taken to a safety cell as per procedure.

21 Later, Plaintiff complained of injuries and asked for treatment. Correctional Officer Vincent  
22 and Nurse Lynch responded. Vincent advised Lynch that Plaintiff had injured himself when he was  
23 placed in the cell. Nurse Lynch reviewed the video footage and concluded that Plaintiff had no need  
24 for medical attention. Plaintiff then spent the night in the safety cell.

25 Plaintiff also complains that on two occasions, legal mail was delivered to him but the mail  
26 had already been opened by Defendants Mattos and Manning. Plaintiff claims this violated his  
27 constitutional rights.

28 Finally, Plaintiff complains that prison officials retaliated against him. He states he was

1 housed in general population in E-Pod. Directly after filing a civil claim against the jail, he was  
2 moved to C-Pod and placed in administrative segregation without explanation. Plaintiff also  
3 complains that Defendant Bailey locked him down in the safety cell for six days after he had choked  
4 himself without a hearing or written statement of reasons. He complains that he was precluded from  
5 church or bible study activities while he was placed in administrative segregation.

6 Plaintiff is seeking compensatory damages in the amount of \$60,000.

7 **C. DISCUSSION**

8 1. Conditions of Confinement – Medical Care

9 In cases of deliberate indifference to a serious medical need, a pretrial detainee’s rights are  
10 analyzed under the Due Process Clause Fourteenth Amendment, while a convicted prisoner’s rights  
11 are analyzed under the Eighth Amendment. Bell v. Wolfish, 441 U.S. 520, 535-36 (1979); Simmons  
12 v. Navajo County, Ariz., 609 F.3d 1011, 1017-18 (9th Cir. 2010); Clouthier v. County of Contra  
13 Costa, 591 F.3d 1232, 1244 (9th Cir. 2010). Nonetheless, the standard for claims brought under the  
14 Eighth Amendment has long been used to analyze pretrial detainees’ conditions of confinement  
15 claims. Simmons, 609 F.3d at 1017-18; Clouthier, 591 F.3d at 1242; Frost v. Agnos, 152 F.3d 1124,  
16 1128 (9th Cir. 1998).

17 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical  
18 care, the Eighth Amendment is violated only when a prison official acts with deliberate indifference  
19 to an inmate’s serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012),  
20 *overruled in part on other grounds*, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014);  
21 Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th  
22 Cir. 2006). Plaintiff “must show (1) a serious medical need by demonstrating that failure to treat  
23 [his] condition could result in further significant injury or the unnecessary and wanton infliction of  
24 pain,” and (2) that “the defendant’s response to the need was deliberately indifferent.” Wilhelm, 680  
25 F.3d at 1122 (citing Jett, 439 F.3d 1091, 1096 (9th Cir. 2006)). Deliberate indifference is shown by  
26 “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need, and (b) harm  
27 caused by the indifference.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The  
28 requisite state of mind is one of subjective recklessness, which entails more than ordinary lack of

1 due care. Snow, 681 F.3d at 985 (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122.

2 Plaintiff's allegations do not demonstrate that any Defendant acted with the requisite state of  
3 mind. Plaintiff contends that he submitted requests for mental health care, but the facts reveal that a  
4 mental health case worker and a doctor responded to his requests. He complains that the Defendant  
5 McKay should have given him anti-psychotic drugs instead of a mood stabilizer but "[a] difference  
6 of opinion between a physician and the prisoner - or between medical professionals - concerning  
7 what medical care is appropriate does not amount to deliberate indifference." Snow v. McDaniel,  
8 681 F.3d 978, 987 (9th Cir. 2012) (citing Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989)),  
9 *overruled in part on other grounds*, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014);  
10 Wilhelm v. Rotman, 680 F.3d 1113, 1122-23 (9th Cir. 2012) (citing Jackson v. McIntosh, 90 F.3d  
11 330, 332 (9th Cir. 1986)).

12 Plaintiff also fails to establish that Defendants Vincent, Lynch and Bailey acted with  
13 deliberate indifference to a serious medical need. All three Defendants responded when Plaintiff  
14 summoned for aid. Defendants Vincent and Bailey passed on his requests to medical personnel, and  
15 Defendant Lynch saw Plaintiff and determined he was not in need of medical attention. Plaintiff's  
16 disagreement with her conclusion does not give rise to a claim of deliberate indifference.

17 Plaintiff has therefore failed to state a deliberate indifference claim against any Defendant.

## 18 2. Interference with Mail

19 Plaintiff complains that Defendants Mattos and Manning opened his mail on two occasions.  
20 Prisoners have "a First Amendment right to send and receive mail." Witherow v. Paff, 52 F.3d 264,  
21 265 (9th Cir. 1995). However, isolated incidents of mail interference or tampering will not support a  
22 claim under section 1983 for violation of plaintiff's constitutional rights. See Davis v. Goord, 320  
23 F.3d 346, 351 (2d. Cir. 2003); Gardner v. Howard, 109 F.3d 427, 431 (8th Cir. 1997); Smith v.  
24 Maschner, 899 F.2d 940, 944 (10th Cir. 1990). Thus, the two incidents where Defendants opened  
25 his mail outside of his presence do not give rise a claim under section 1983.

## 26 3. Retaliation

27 "Prisoners have a First Amendment right to file grievances against prison officials and to be  
28 free from retaliation for doing so." Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012) (citing

1 Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)). Also protected by the First Amendment is  
2 the right to pursue civil rights litigation in federal court without retaliation. Silva v. Di Vittorio, 658  
3 F.3d 1090, 1104 (9th Cir. 2011). “Within the prison context, a viable claim of First Amendment  
4 retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action  
5 against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4)  
6 chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably  
7 advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

8 Here, Plaintiff vaguely states that he was moved to administrative segregation soon after he  
9 filed grievances. This is insufficient to state a claim of retaliation. Plaintiff fails to identify a state  
10 actor; he fails to show that any Defendant acted with retaliatory motive; he fails to show that his  
11 First Amendment rights were chilled; and he fails to demonstrate that the action did not reasonably  
12 advance a legitimate correctional goal.

13 4. Placement in Administrative Segregation

14 Last, Plaintiff complains that he was moved from E-Pod to C-Pod administrative segregation  
15 without reason or explanation after he had complained of his mental health issues.

16 The Due Process Clause protects Plaintiff against the deprivation of liberty without the  
17 procedural protections to which he is entitled under the law. Wilkinson v. Austin, 545 U.S. 209,  
18 221, 125 S.Ct. 2384 (2005). To state a claim, Plaintiff must first identify the interest at stake.  
19 Wilkinson, 545 U.S. at 221. Liberty interests may arise from the Due Process Clause itself or from  
20 state law. Id. The Due Process Clause does not confer on inmates a liberty interest in avoiding more  
21 adverse conditions of confinement, and under state law, the existence of a liberty interest created by  
22 prison regulations is determined by focusing on the nature of the condition of confinement at issue.  
23 Id. at 221-23 (citing Sandin v. Conner, 515 U.S. 472, 481-84, 115 S.Ct. 2293 (1995)) (quotation  
24 marks omitted). Liberty interests created by prison regulations are generally limited to freedom  
25 from restraint which imposes atypical and significant hardship on the inmate in relation to the  
26 ordinary incidents of prison life. Wilkinson, 545 U.S. at 221 (citing Sandin, 515 U.S. at 484)  
27 (quotation marks omitted); Myron v. Terhune, 476 F.3d 716, 718 (9th Cir. 2007).

28 Here, Plaintiff readily admits that he was placed in a safety cell for his own safety and for the

1 safety of other inmates as a result of his suicidal behavior and complaints of mental health issues.  
2 Plaintiff was released six days later when he agreed to abide by certain conditions concerning his  
3 mental health. Under these facts, Plaintiff fails to state a claim under the Due Process Clause.

4 **D. CONCLUSION AND ORDER**

5 Plaintiff's First Amended Complaint fails to state a claim upon which relief may be granted  
6 under section 1983. Plaintiff was previously provided with the opportunity to amend and he was  
7 unable to cure the deficiencies. Based on the nature of the deficiencies, further leave to amend is not  
8 warranted. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d  
9 1122, 1130 (9th Cir. 2000).

10 Accordingly, it is HEREBY ORDERED that:

- 11 1. Plaintiff's complaint is DISMISSED, without leave to amend, for failure to state a  
12 claim under section 1983;  
13 2. This action is DISMISSED WITH PREJUDICE; and  
14 3. This constitutes a strike for purposes of 28 U.S.C. § 1915(g).

15  
16 IT IS SO ORDERED.

17 Dated: June 16, 2016

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE