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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

HERBERT JOHNSON,  
Plaintiff,  
v.  
UNNAMED DEFENDANTS,  
Defendants.

1:16-cv-00708-DAD-MJS (PC)

**ORDER DISMISSING COMPLAINT WITH  
LEAVE TO AMEND  
(ECF NO. 23.)  
THIRTY-DAY DEADLINE**

Plaintiff is a state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the jurisdiction of the undersigned. (ECF No. 6.)

Plaintiff's complaint is before the Court for screening.<sup>1</sup>

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<sup>1</sup> Plaintiff initiated this action on March 9, 2016, in the Southern District of California, and this case was transferred to the Eastern District of California on May 20, 2016. Before the court had an opportunity to screen his complaint, Plaintiff moved to amend it. (ECF No. 21.) That motion was denied on July 22, 2016, because Plaintiff had the right to amend once as a matter of course pursuant to Federal Rule of Civil Procedure 15. Over two and one half months later, Plaintiff still has not filed an amended pleading. Accordingly, the undersigned screens his original complaint in this order.

1 **I. Screening Requirement**

2 The in forma pauperis statute provides, “Notwithstanding any filing fee, or any  
3 portion thereof, that may have been paid, the court shall dismiss the case at any time if  
4 the court determines that . . . the action or appeal . . . fails to state a claim upon which  
5 relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 **II. Pleading Standard**

7 Section 1983 “provides a cause of action for the deprivation of any rights,  
8 privileges, or immunities secured by the Constitution and laws of the United States.”  
9 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).  
10 Section 1983 is not itself a source of substantive rights, but merely provides a method for  
11 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94  
12 (1989).

13 To state a claim under § 1983, a plaintiff must allege two essential elements:  
14 (1) that a right secured by the Constitution or laws of the United States was violated and  
15 (2) that the alleged violation was committed by a person acting under the color of state  
16 law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d  
17 1243, 1245 (9th Cir. 1987).

18 A complaint must contain “a short and plain statement of the claim showing that  
19 the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
20 are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
21 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.  
22 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).  
23 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief  
24 that is plausible on its face.” Id. Facial plausibility demands more than the mere  
25 possibility that a defendant committed misconduct and, while factual allegations are  
26 accepted as true, legal conclusions are not. Id. at 677-78.

1 **III. Plaintiff's Allegations**

2 Plaintiff, who at all relevant times was an inmate housed at North Kern State  
3 Prison ("NKSP") in Delano, California, brings this action without identifying any  
4 Defendants.

5 Plaintiff's claims can be summarized as follows:

6 Plaintiff is being denied adequate medical care at NKSP. Though it is not entirely  
7 clear, he may also have been denied food and suffered a 40-pound weight loss.

8 Plaintiff does not specify the type of relief he seeks.

9 **IV. Analysis**

10 **A. Linkage**

11 Plaintiff has failed to identify any individuals in connection with the violation of his  
12 constitutional rights. Under § 1983, Plaintiff must demonstrate that each named  
13 defendant personally participated in the deprivation of his rights. Iqbal, 556 U.S. 662,  
14 676-77 (2009); Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010);  
15 Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297  
16 F.3d 930, 934 (9th Cir. 2002). If Plaintiff chooses to file an amended complaint, he must  
17 specifically name one or more Defendants who are claimed to have violated his rights,  
18 and he must also allege specific facts identifying the role of each Defendant in the  
19 violation of his rights.

20 Since the complaint does not name any Defendant, it must be dismissed.  
21 However, leave to amend will be granted. Should Plaintiff choose to amend, the Court  
22 sets forth below the applicable legal standards for the claims Plaintiff appears to assert  
23 in his complaint.

24 **B. Eleventh Amendment Immunity**

25 If Plaintiff chooses to amend, he should also clarify whether he is bringing suit  
26 against the Defendant(s) in his or her official capacities. Plaintiff is forewarned that any  
27 claim for damages against any Defendant in his or her official capacity is barred. "The  
28 Eleventh Amendment bars suits for money damages in federal court against a state, its

1 agencies, and state officials in their official capacities.” Aholelei v. Dept. of Public Safety,  
2 488 F.3d 1144, 1147 (9th Cir. 2007) (citations omitted). However, the Eleventh  
3 Amendment does not bar suits seeking damages against state officials in their personal  
4 capacities, Hafer v. Melo, 502 U.S. 21, 30 (1991); Porter v. Jones, 319 F.3d 483, 491  
5 (9th Cir. 2003), or suits for declaratory or injunctive relief brought against state officials in  
6 their official capacities, Austin v. State Indus. Ins. System, 939 F.2d 676, 680 fn.2 (9th  
7 Cir. 1991).

### 8 **C. Eighth Amendment**

9 The treatment a prisoner receives in prison and the conditions under which the  
10 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits  
11 cruel and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer  
12 v. Brennan, 511 U.S. 825, 832 (1994). The Eighth Amendment “...embodies broad and  
13 idealistic concepts of dignity, civilized standards, humanity, and decency.” Estelle v.  
14 Gamble, 429 U.S. 97, 102 (1976). Conditions of confinement may, however, be harsh  
15 and restrictive. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison  
16 officials must provide prisoners with “food, clothing, shelter, sanitation, medical care, and  
17 personal safety.” Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986).

18 A prison official violates the Eighth Amendment only when two requirements are  
19 met: (1) objectively, the official's act or omission must be so serious such that it results in  
20 the denial of the minimal civilized measure of life's necessities; and (2) subjectively, the  
21 prison official must have acted unnecessarily and wantonly for the purpose of inflicting  
22 harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison  
23 official must have a “sufficiently culpable mind.” See id.

#### 24 **1. Medical Indifference**

25 Deliberate indifference to a prisoner's serious illness or injury, or risks of serious  
26 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S.  
27 at 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and  
28 mental health needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An

1 injury or illness is sufficiently serious if the failure to treat a prisoner's condition could  
2 result in further significant injury or the "...unnecessary and wanton infliction of pain."  
3 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992); see also Doty v. County of  
4 Lassen, 37 F.3d 540, 546 (9th Cir. 1994). Factors indicating seriousness are: (1)  
5 whether a reasonable doctor would think that the condition is worthy of comment; (2)  
6 whether the condition significantly impacts the prisoner's daily activities; and (3) whether  
7 the condition is chronic and accompanied by substantial pain. See Lopez v. Smith, 203  
8 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

9 The requirement of deliberate indifference is less stringent in medical needs  
10 cases than in other Eighth Amendment contexts because the responsibility to provide  
11 inmates with medical care does not generally conflict with competing penological  
12 concerns. See McGuckin, 974 F.2d at 1060. Thus, deference need not be given to the  
13 judgment of prison officials as to decisions concerning medical needs. See Hunt v.  
14 Dental Dep't, 865 F.2d 198, 200 (9th Cir. 1989). The complete denial of medical  
15 attention may constitute deliberate indifference. See Toussaint v. McCarthy, 801 F.2d  
16 1080, 1111 (9th Cir. 1986).

17 Delay in providing medical treatment, or interference with medical treatment, may  
18 also constitute deliberate indifference. See Lopez, 203 F.3d at 1131. Where delay is  
19 alleged, however, the prisoner must also demonstrate that the delay led to further injury.  
20 See McGuckin, 974 F.2d at 1060.

## 21 **2. Denial of Food**

22 The intentional denial of food resulting in a significant loss of weight and illness  
23 over the course of months states a sufficiently serious deprivation. See Keenan v. Hall,  
24 83 F.3d 1083, 1091 (9th Cir. 1996) ("Adequate food is a basic human need protected by  
25 the Eighth Amendment."); see also Foster v. Runnels, 554 F.3d 807, 812 (9th Cir. 2009)  
26 (finding sufficiently serious deprivation where inmate was denied 16 meals in 23 days);  
27 Simmons v. Cook, 154 F.3d 805, 807-09 (8th Cir. 1998) (affirming Eighth Amendment  
28 violation where inmates were deprived of four consecutive meals); Robles v. Coughlin,

1 725 F.2d 12, 16 (2d Cir. 1983) (finding that allegations of deprivation of meals and  
2 contaminated food were sufficient to withstand dismissal of inmate's Eighth Amendment  
3 claim).

4 **V. Conclusion**

5 Based on the foregoing, the Court finds that Plaintiff fails to state a claim. Plaintiff  
6 will, however, be granted leave to amend. If Plaintiff files a first amended complaint, it  
7 must identify specific Defendants and must also state what each named Defendant did  
8 that led to the deprivation of his constitutional rights. Iqbal, 556 U.S. at 676-77. Plaintiff  
9 should carefully read this Screening Order and focus his efforts on curing the  
10 deficiencies set forth above.

11 Plaintiff is advised that Local Rule 220 requires that an amended complaint be  
12 complete in itself without reference to any prior pleading. As a general rule, an  
13 "amended complaint supersedes the original" complaint. See Loux v. Rhay, 375 F.2d  
14 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no  
15 longer serves any function in the case. Therefore, in an amended complaint, as in an  
16 original complaint, each claim and the involvement of each defendant must be  
17 sufficiently alleged. The amended complaint should be clearly and boldly titled "First  
18 Amended Complaint," refer to the appropriate case number, and be an original signed  
19 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.  
20 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a  
21 right to relief above the speculative level . . . ." Twombly, 550 U.S. at 555 (citations  
22 omitted).

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. Plaintiff's March 9, 2016, Complaint (ECF No. 1) is dismissed for failure to  
25 state a claim;
- 26 2. Plaintiff shall file a First Amended Complaint within thirty days from the  
27 date of this Order; and

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3. Plaintiff's failure to file an amended complaint within thirty days will result in a recommendation that this action be dismissed without prejudice for failure to prosecute and failure to comply with a court order.

IT IS SO ORDERED.

Dated: October 17, 2016

1st Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE