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

AARON AUGUSTINE HEREDIA,  
Plaintiff,  
v.  
CCI, et al.,  
Defendants.

**Case No. 1:16-cv-00788-JLT (PC)**  
**ORDER DISMISSING SECOND AMENDED COMPLAINT WITH PREJUDICE**  
**(Doc. 23)**  
**ORDER DIRECTING CLERK’S OFFICE TO CLOSE CASE**

**INTRODUCTION**

Plaintiff brought this action under 42 U.S.C. § 1983 for violation of his rights under the Eighth Amendment for failure to protect him from dangerous conditions. Despite twice receiving the required pleading and legal standards and dismissal of Plaintiff’s Original and First Amended Complaint for his failure to link any of the named defendants to his factual allegations, Plaintiff failed to link *any* individual state actors to *any* of his factual allegations in the Second Amended Complaint. Further, Plaintiff now fails to state any specific factual allegations regarding any particular incident to show that he was housed under dangerous conditions. Given that this is his third effort, it appears that Plaintiff is unable to state a cognizable claim and to link any state actors to his allegations. Because of this, the Second Amended Complaint is **DISMISSED with prejudice**.

1 **ANALYSIS**

2 **A. Screening Requirement**

3 The Court is required to screen complaints brought by prisoners seeking relief against a  
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
5 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
6 frivolous, malicious, fail to state a claim upon which relief may be granted, or that seek monetary  
7 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C.  
8 § 1915(e)(2)(B)(i)-(iii).

9 **B. Summary of the Second Amended Complaint**

10 Plaintiff complains of an incident that occurred at California Correctional Institute  
11 (“CCI”) in Tehachapi, California and now names the following defendants: CCI Warden Kim  
12 Holland; FC Chariperson J. Jones; CCII T. Nipper; CCI(A) A. Tabias; Lt. Inmate Assessment, K.  
13 Large; and CSR A. Barkley.

14 Plaintiff alleges that, due to an administration error, he was living on a level 3 yard, but  
15 was supposed to be on a level 2 yard -- which put his life in danger. After an incident, Plaintiff  
16 was shot, sprayed, hit, stripped, and denied “medical care for over five hours on more than one  
17 occasion.”

18 Plaintiff fails both to link any of the individuals named as defendants to his factual  
19 allegations and does not even state factual allegations to show that he was attacked, let alone  
20 stated any cognizable claims under 42 U.S.C. § 1983 in the SAC. Since Plaintiff has twice been  
21 given opportunity to amend his pleading to correct deficiencies, it appears that further leave to  
22 amend would be futile and need not be extended. *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th  
23 Cir. 2012). This action is thus DISMISSED with prejudice.

24 **C. Pleading Requirements**

25 **1. Federal Rule of Civil Procedure 8(a)**

26 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
27 exceptions,” none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534  
28 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain “a short and plain

1 statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R. Civ. Pro. 8(a).  
2 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and  
3 the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512.

4 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a  
5 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556  
6 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

7 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is  
8 plausible on its face.’” *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual  
9 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; *see also Moss v. U.S.*  
10 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

11 While “plaintiffs [now] face a higher burden of pleadings facts . . . .,” *Al-Kidd v. Ashcroft*,  
12 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally  
13 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).  
14 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations,” *Neitze*  
15 *v. Williams*, 490 U.S. 319, 330 n.9 (1989), “a liberal interpretation of a civil rights complaint may  
16 not supply essential elements of the claim that were not initially pled,” *Bruns v. Nat’l Credit*  
17 *Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266,  
18 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences, *Doe I v. Wal-*  
19 *Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation  
20 omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and  
21 “facts that are ‘merely consistent with’ a defendant’s liability” fall short of satisfying the  
22 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

23 Despite twice being informed that an amended complaint supercedes the original, *Lacey v.*  
24 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at \*1 n.1 (9th Cir. Aug. 29,  
25 2012) (en banc), and that Local Rule 220 requires amended pleadings be “complete in itself,”  
26 Plaintiff’s allegations have become more and more sparse. The SAC does not contain any  
27 allegations from which to infer that Plaintiff’s mere placement on a level 3 yard placed him, as a  
28 level 2 inmate, in danger.

1                                   **2.     Linkage Requirement**

2                   The Civil Rights Act (42 U.S.C. § 1983) requires that there be an actual connection or link  
3 between the actions of the defendants and the deprivation alleged to have been suffered by  
4 Plaintiff. *See Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423  
5 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation  
6 of a constitutional right, within the meaning of section 1983, if he does an affirmative act,  
7 participates in another’s affirmative acts or omits to perform an act which he is legally required to  
8 do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743  
9 (9th Cir. 1978). In order to state a claim for relief under section 1983, Plaintiff must link each  
10 named defendant with some affirmative act or omission that demonstrates a violation of  
11 Plaintiff’s federal rights.

12                   As noted above, despite twice being informed of this requirement, Plaintiff fails to link  
13 any individual defendants to any of his factual allegations. The SAC fails to put any defendant on  
14 notice of Plaintiff’s claims against him or her. *See Austin v. Terhune*, 367 F.3d 1167, 1171 (9th  
15 Cir. 2004).

16                   **D.     Legal Standards**

17                                   **1.     Eighth Amendment -- Failure to Protect**

18                   “The treatment a prisoner receives in prison and the conditions under which he is confined  
19 are subject to scrutiny under the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S. 825, 832,  
20 114 S.Ct. 1970 (1994) (citing *Helling v. McKinney*, 509 U.S. 25, 31 (1993)). Prison officials  
21 have a duty “to take reasonable measures to guarantee the safety of inmates, which has been  
22 interpreted to include a duty to protect prisoners.” *Labatad v. Corrections Corp. of America*, 714  
23 F.3d 1155, 1160 (citing *Farmer*, 511 U.S. at 832-33; *Hearns v. Terhune*, 413 F.3d 1036, 1040  
24 (9th Cir. 2005)).

25                   To establish a violation of this duty, the prisoner must “show that the officials acted with  
26 deliberate indifference to threat of serious harm or injury to an inmate.” *Labatad*, at 1160 (citing  
27 *Gibson v. County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002)). This involves both objective  
28 and subjective components.

1 First, objectively, the alleged deprivation must be “sufficiently serious” and where a  
2 failure to prevent harm is alleged, “the inmate must show that he is incarcerated under conditions  
3 posing a substantial risk of serious harm.” *Id.* at 834, quoting *Rhodes v. Chapman*, 452 U.S. 337,  
4 349, 101 S.Ct. 2392 (1981). Second, subjectively, the prison official must “know of and  
5 disregard an excessive risk to inmate health or safety.” *Id.* at 837; *Anderson v. County of Kern*,  
6 45 F.3d 1310, 1313 (9th Cir. 1995). A prison official must “be aware of facts from which the  
7 inference could be drawn that a substantial risk of serious harm exists, and . . . must also draw the  
8 inference.” *Farmer*, 511 U.S. at 837, 114 S.Ct. 1970. Liability may follow only if a prison  
9 official “knows that inmates face a substantial risk of serious harm and disregards that risk by  
10 failing to take reasonable measures to abate it.” *Id.* at 847, 114 S.Ct. 1970.

11 Plaintiff’s allegations fail to show that any of the individuals he named as defendants  
12 knew that he was in the wrong housing unit, that being housed in a wrong unit posed a substantial  
13 risk of serious harm and that any of the named defendants knew of and disregarded an excessive  
14 risk to Plaintiff’s safety. Plaintiff’s general allegations that the defendants knew he had been  
15 placed in the wrong housing unit are conclusory and need not be accepted as true. *Iqbal*, 556  
16 U.S. at 678.

## 17 2. Eighth Amendment -- Medical Care

18 Prison officials violate the Eighth Amendment if they are “deliberate[ly] indifferen[t] to [a  
19 prisoner’s] serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). “A medical need  
20 is serious if failure to treat it will result in “significant injury or the unnecessary and wanton  
21 infliction of pain.”” *Peralta v. Dillard*, 744 F.3d 1076, 1081-82 (2014) (quoting *Jett v. Penner*,  
22 439 F.3d 1091, 1096 (9th Cir.2006) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th  
23 Cir.1992), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th  
24 Cir.1997) (en banc))

25 To maintain an Eighth Amendment claim based on medical care in prison, a plaintiff must  
26 first “show a serious medical need by demonstrating that failure to treat a prisoner’s condition  
27 could result in further significant injury or the unnecessary and wanton infliction of pain. Second,  
28 the plaintiff must show the defendants’ response to the need was deliberately indifferent.”

1 *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (quoting *Jett*, 439 F.3d at 1096  
2 (quotation marks omitted)).

3 As to the first prong, indications of a serious medical need “include the existence of an  
4 injury that a reasonable doctor or patient would find important and worthy of comment or  
5 treatment; the presence of a medical condition that significantly affects an individual’s daily  
6 activities; or the existence of chronic and substantial pain.” *Colwell v. Bannister*, 763 F.3d 1060,  
7 1066 (9th Cir. 2014) (citation and internal quotation marks omitted); accord *Wilhelm*, 680 F.3d at  
8 1122; *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000). Plaintiff again fails to allege what  
9 medical condition he had that might constitute a serious medical need.

10 As to the second prong, deliberate indifference is “a state of mind more blameworthy than  
11 negligence” and “requires ‘more than ordinary lack of due care for the prisoner’s interests or  
12 safety.’ ” *Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (quoting *Whitley*, 475 U.S. at 319).  
13 Deliberate indifference is shown where a prison official “knows that inmates face a substantial  
14 risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”  
15 *Id.*, at 847. In medical cases, this requires showing: (a) a purposeful act or failure to respond to a  
16 prisoner’s pain or possible medical need and (b) harm caused by the indifference. *Wilhelm*, 680  
17 F.3d at 1122 (quoting *Jett*, 439 F.3d at 1096). “A prisoner need not show his harm was  
18 substantial; however, such would provide additional support for the inmate’s claim that the  
19 defendant was deliberately indifferent to his needs.” *Jett*, 439 F.3d at 1096, citing *McGuckin*, 974  
20 F.2d at 1060.

21 Deliberate indifference is a high legal standard. *Toguchi v. Chung*, 391 F.3d 1051, 1060  
22 (9th Cir.2004). “Under this standard, the prison official must not only ‘be aware of the facts from  
23 which the inference could be drawn that a substantial risk of serious harm exists,’ but that person  
24 ‘must also draw the inference.’ ” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). “‘If a prison  
25 official should have been aware of the risk, but was not, then the official has not violated the  
26 Eighth Amendment, no matter how severe the risk.’ ” *Id.* (quoting *Gibson v. County of Washoe,*  
27 *Nevada*, 290 F.3d 1175, 1188 (9th Cir. 2002)).

28 Plaintiff merely alleges that the named defendants “didn’t allow me medical care for over

1 5 hrs on more than one occasion.” (Doc. 23, p. 5.) Plaintiff does not allege what injury he had  
2 that needed medical attention in less than 5 hours. Indeed, such a delay is common in most  
3 emergency rooms for non life-threatening conditions; the fact he is a prisoner does not entitle him  
4 to a greater level of care. Further, Plaintiff fails to link any individual defendant to his allegations  
5 to show that any of them specifically knew that Plaintiff suffered from any medical condition and  
6 intentionally chose action contrary to his medical needs.

### 7 3. Supervisory Liability

8 Plaintiff was also twice previously informed that supervisory personnel are generally not  
9 liable under section 1983 for the actions of their employees under a theory of *respondeat superior*  
10 and, therefore, when a named defendant holds a supervisory position, the causal link between him  
11 and the claimed constitutional violation must be specifically alleged. *See Fyale v. Stapley*, 607  
12 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied,  
13 442 U.S. 941 (1979). To state a claim for relief under section 1983 based on a theory of  
14 supervisory liability, Plaintiff must allege some facts that would support a claim that supervisory  
15 defendants either: personally participated in the alleged deprivation of constitutional rights; knew  
16 of the violations and failed to act to prevent them; or promulgated or "implemented a policy so  
17 deficient that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of  
18 the constitutional violation.'" *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989) (internal  
19 citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Under section 1983,  
20 liability may not be imposed on supervisory personnel for the actions of their employees under a  
21 theory of *respondeat superior*. *Iqbal*, 556 U.S. at 677. "In a § 1983 suit or a *Bivens* action -  
22 where masters do not answer for the torts of their servants - the term 'supervisory liability' is a  
23 misnomer." *Id.* Knowledge and acquiescence of a subordinate's misconduct is insufficient to  
24 establish liability; each government official is only liable for his or her own misconduct. *Id.*

25 “[B]are assertions . . . amount[ing] to nothing more than a “formulaic recitation of the  
26 elements” of a constitutional discrimination claim,’ for the purposes of ruling on a motion to  
27 dismiss [and thus also for screening purposes], are not entitled to an assumption of truth.” *Moss*,  
28 572 F.3d at 969 (quoting *Iqbal*, 556 U.S. at 1951 (quoting *Twombly*, 550 U.S. at 555)). “Such

1 allegations are not to be discounted because they are ‘unrealistic or nonsensical,’ but rather  
2 because they do nothing more than state a legal conclusion – even if that conclusion is cast in the  
3 form of a factual allegation.” *Id.* Thus, any allegations that supervisory personnel such as a  
4 Warden is somehow liable because of the acts of those under his or her supervision does not state  
5 a cognizable claim.

6 Despite previously being given these standards for claims against supervisory personnel,  
7 Plaintiff fails to state anything other than legal conclusions against all of the defendants -- let  
8 alone any of the supervisory defendants named in this action.

9 **ORDER**

10 The Second Amended Complaint neither links any of the named defendants to factual  
11 allegations, nor states any cognizable claims. Given the persistent deficiency in Plaintiff’s  
12 pleading, despite having previously been provided the requisite legal standards, it appears futile to  
13 allow further amendment. *Akhtar*, 698 F.3d at 1212-13.

14 Accordingly, the Second Amended Complaint is DISMISSED with prejudice and the  
15 Clerk of the Court is directed to close the action.

16  
17 IT IS SO ORDERED.

18 Dated: November 6, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE