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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JODY MOREHOUSE,  
Plaintiff,  
v.  
KERN COUNTY SHERIFF’S OFFICE,  
et. al.,  
Defendants.

**CASE NO. 1:16-cv-00986-MJS (PC)**  
**ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND**  
**(ECF NO. 1)**  
**THIRTY-DAY DEADLINE TO AMEND**

Plaintiff is a pretrial detainee proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. His July 11, 2016 complaint is before the Court for screening. (ECF No. 1.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 4.) No other parties have appeared in the action.

**I. Screening Requirement**

The Court is required to screen complaints brought by prisoners and pretrial detainees seeking relief against a governmental entity or an 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 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

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

#### 4 **II. Pleading Standard**

5 A complaint must contain “a short and plain statement of the claim showing that  
6 the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
7 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported  
8 by mere conclusory statements, do not suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678  
9 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)), and courts “are  
10 not required to indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d  
11 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual  
12 allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678.

13 Under section 1983, Plaintiff must demonstrate that each defendant personally  
14 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.  
15 2002). This requires the presentation of factual allegations sufficient to state a plausible  
16 claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,  
17 969 (9th Cir. 2009). Prisoners proceeding pro se in civil rights actions are entitled to  
18 have their pleadings liberally construed and to have any doubt resolved in their favor,  
19 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted), but nevertheless,  
20 the mere possibility of misconduct falls short of meeting the plausibility standard, Iqbal,  
21 556 U.S. at 678; Moss, 572 F.3d at 969.

#### 22 **III. Plaintiff’s Allegations**

23 Plaintiff’s claims stem from his incarceration in the Lerdo Pretrial Facility of the  
24 Kern County Jail in Bakersfield, California. He brings this action against the Kern County  
25 Sheriff’s Office (“KCSO”) and “Kern County Mental Health.”

26 His allegations may be summarized essentially as follows:

27 Plaintiff is diagnosed with bipolar disorder and an anxiety disorder. He has not  
28 received his medications, namely klonopin and remeron, since he was incarcerated, and

1 as such has suffered anxiety and depression.

2 Plaintiff seeks injunctive relief and monetary damages.

3 **IV. Analysis**

4 **A. Municipal Entity Liability**

5 Plaintiff sues only the KCSO and Kern County Mental Health; he names no  
6 individual defendants. He thus appears to make a Monell claim.

7 “[S]ection 1983 imposes liability only on ‘persons’ who, under color of law, deprive  
8 others of their constitutional rights, [and] the Supreme Court has construed the term  
9 ‘persons’ to include municipalities such as the County.” Castro v. Cty. of Los Angeles,  
10 797 F.3d 654, 670 (9th Cir. 2015) (citing Monell v. Dep’t of Social Services, 436 U.S. 658,  
11 690-91 (1978)). Counties may not be held liable for the actions of their employees under  
12 a theory of *respondeat superior*, but they may be held liable for a constitutional violation if  
13 an action taken pursuant to a policy, be it a formal or informal policy, caused the  
14 underlying violation. Castro, 797 F.3d at 670 (citing City of St. Louis v. Praprotnik, 485  
15 U.S. 112, 131 (1989) and Monell, 436 U.S. at 691) (quotation marks omitted); see also  
16 Simmons v. Navajo Cty., Ariz., 609 F.3d 1011, 1021 (9th Cir. 2010) (municipal liability  
17 claim cannot be maintained unless there is an underlying constitutional violation).

18 Municipal liability may also be imposed where the local government unit’s  
19 omission led to the constitutional violation by its employee. Gibson v. Cty. Of Washoe,  
20 Nev., 290 F.3d 1175, 1186 (9th Cir. 2002). Under this route to municipal liability, the  
21 “plaintiff must show that the municipality’s deliberate indifference led to its omission and  
22 that the omission caused the employee to commit the constitutional violation.” Id. This  
23 kind of deliberate indifference is found when the need to remedy the omission is so  
24 obvious, and the failure to act so likely to result in the violation of rights, that the  
25 municipality reasonably can be said to have been deliberately indifferent when it failed to  
26 act. Id. at 1195.

27 In this case, Plaintiff has not linked the underlying violation of his rights by  
28 Defendants to a policy or practice attributable to the county, nor has he provided any

1 facts showing that the county knew of, and blatantly ignored, constitutional violations  
2 committed by its employees. Therefore, all claims against the KCSO and Kern County  
3 Mental Health will be dismissed with leave to amend.

4 **B. Linkage**

5 In the event Plaintiff intends to make a claim against individual defendants for the  
6 violation of his rights, he must adhere to the requirements set forth below.

7 Under § 1983, Plaintiff must demonstrate that each named defendant *personally*  
8 participated in the deprivation of his rights. Ashcroft, 556 U.S. at 676-7; Simmons, 609  
9 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th  
10 Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff may not  
11 attribute liability to a group of defendants, but must “set forth specific facts as to each  
12 individual defendant’s” deprivation of his rights. Leer v. Murphy, 844 F.2d 628, 634 (9th  
13 Cir. 1988); see also Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Liability may not  
14 be imposed on supervisory personnel under the theory of *respondeat superior*, as each  
15 defendant is only liable for his or her own misconduct. Iqbal, 556 U.S. at 676-77; Ewing,  
16 588 F.3d at 1235. Supervisors may only be held liable if they “participated in or directed  
17 the violations, or knew of the violations and failed to act to prevent them.” Lemire v. Cal.  
18 Dept. of Corrections & Rehabilitation, 726 F.3d 1062, 1074-75 (9th Cir. 2013).

19 **C. Cruel and Unusual Punishment**

20 Plaintiff alleges that Defendants violated his right to be free from cruel and unusual  
21 punishment under the Eighth Amendment when Plaintiff did not receive his medications.  
22 As Plaintiff is a pretrial detainee, however, his claims are properly evaluated under the  
23 Due Process Clause of the Fourteenth Amendment.

24 The standard applicable to a pretrial detainee’s claim for inadequate medical care  
25 under the Fourteenth Amendment is presently not clear. In the past, such claims were  
26 subject to the same state of mind requirement as an Eighth Amendment violation, i.e.,  
27 subjective and deliberate indifference to a substantial risk of serious harm. See Clouthier  
28 v. County of Contra Costa, 591 F.3d 1232 (9th Cir. 2010). However, that holding was

1 called into question by the United States Supreme Court in a Fourteenth Amendment  
2 excessive force case, Kingsley v. Hendrickson, 135 S. Ct. 2466, 2473 (2015). Most  
3 recently, the Ninth Circuit extended the Kingsley rationale to a Fourteenth Amendment  
4 failure-to-protect claim. Castro v. Cty. of Los Angeles, No. 12-56829, 2016 WL 4268955,  
5 at \*7 (9th Cir. Aug. 15, 2016) (en banc) (slip op). Although Castro did not expressly  
6 extend its holding to other Fourteenth Amendment violations, the Court sees no reason  
7 why the same rationale should not apply to other Fourteenth Amendment conditions of  
8 confinement claims.

9       Accordingly, in order to proceed on such a claim, Plaintiff must allege “(1) the  
10 defendant made an intentional decision with respect to the conditions under which the  
11 plaintiff was confined; (2) those conditions put the plaintiff at substantial risk of suffering  
12 serious harm; (3) the defendant did not take reasonable available measures to abate that  
13 risk, even though a reasonable officer in the circumstances would have appreciated the  
14 high degree of risk involved—making the consequences of the defendant's conduct  
15 obvious; and (4) by not taking such measures, the defendant caused the plaintiff's  
16 injuries.” Id. With respect to the third element, the defendant's conduct must be  
17 “objectively unreasonable.” Id. (citing Kingsley, 135 S. Ct. at 2473).

18       Plaintiff has provided no more than nonspecific and conclusory allegations to  
19 support his medical care claim. He has not explained whether he requested his  
20 medications, whether any personnel was aware of his medical needs, whether or how the  
21 denial of his medications puts him at substantial risk of suffering serious harm, or any  
22 reasons given for denying his treatment. There are no facts upon which the Court could  
23 conclude that any individuals responded to Plaintiff's needs in an objectively  
24 unreasonable manner. Plaintiff will be granted leave to amend.

## 25 **V. Conclusion**

26       Plaintiff's complaint fails to state a cognizable claim. The Court will provide Plaintiff  
27 the opportunity to file an amended complaint, if he believes, in good faith, he can cure the  
28 identified deficiencies. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v.

1 Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49  
2 (9th Cir. 1987). If Plaintiff amends, he may not change the nature of this suit by adding  
3 new, unrelated claims. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

4 The Court advises Plaintiff an amended complaint supersedes the original  
5 complaint, Lacey v. Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc),  
6 and it must be “complete in itself without reference to the prior or superseded pleading,”  
7 Local Rule 220.

8 Based on the foregoing, it is HEREBY ORDERED that:

- 9 1. Plaintiff’s complaint (ECF No. 1) is DISMISSED with leave to amend;
- 10 2. The Clerk’s Office shall send Plaintiff a blank civil rights complaint form and  
11 a copy of his complaint filed July 11, 2016;
- 12 3. Within **thirty (30) days** from the date of service of this order, Plaintiff must  
13 file an amended complaint curing the deficiencies identified by the Court in  
14 this order or a notice of voluntary dismissal;
- 15 4. If Plaintiff fails to file an amended complaint or notice of voluntary dismissal,  
16 the undersigned this action will be dismissed, with prejudice, for failure to  
17 state a claim and failure to obey a court order, subject to the “three strikes”  
18 provision set forth in 28 U.S.C. § 1915(g).

19  
20 IT IS SO ORDERED.

21 Dated: September 21, 2016

/s/ Michael J. Seng  
22 UNITED STATES MAGISTRATE JUDGE  
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