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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DANIEL MURPHY COSTON,  
Plaintiff,  
v.  
MAJIAD RAHIMIFAR, et al.,  
Defendant.

**CASE NO. 1:17-cv-00765-MJS (PC)**  
**ORDER DISMISSING COMPLAINT WITH  
LEAVE TO AMEND**  
**(ECF No. 1)**  
**THIRTY-DAY DEADLINE TO AMEND**

19 Plaintiff proceeds pro se and in forma pauperis in this civil rights action brought  
20 pursuant to 42 U.S.C. § 1983. Plaintiff's June 5, 2017 complaint is before the Court for  
21 screening. (ECF No. 1.)

22 **I. Screening Requirement**

23 The Court is required to screen complaints brought by inmates seeking relief  
24 against a governmental entity or an officer or employee of a governmental entity. 28  
25 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner  
26 has raised claims that are legally "frivolous or malicious," that fail to state a claim upon  
27 which relief may be granted, or that seek monetary relief from a defendant who is  
28 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). "Notwithstanding any filing fee,

1 or any portion thereof, that may have been paid, the court shall dismiss the case at any  
2 time if the court determines that . . . the action or appeal . . . fails to state a claim upon  
3 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 Prisoners may bring § 1983 claims against individuals acting “under color of state  
14 law.” See 42 U.S.C. § 1983, 28 U.S.C. § 1915(e) (2)(B)(ii). Under § 1983, Plaintiff must  
15 demonstrate that each defendant personally participated in the deprivation of his rights.  
16 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires the presentation of  
17 factual allegations sufficient to state a plausible claim for relief. Iqbal, 556 U.S. at 678-79;  
18 Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). Prisoners proceeding  
19 pro se in civil rights actions are entitled to have their pleadings liberally construed and to  
20 have any doubt resolved in their favor, Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)  
21 (citations omitted), but nevertheless, the mere possibility of misconduct falls short of  
22 meeting the plausibility standard, Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

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

24 Plaintiff is currently incarcerated at California State Prison, Corcoran (“CSPC”), in  
25 Corcoran, California, where his claims arose. He brings this action against Dr. Rajiad  
26 Rahimifar, a surgeon in Bakersfield, California; Alcano, a doctor at CSPC; Conall  
27 McCabe, a doctor at CSPC; and C. Ogbuehi, a physician’s assistant at CSPC.

28 As the court explains in the screening analysis below, Plaintiff presents two claims

1 arising from apparently unrelated incidents. First, he alleges inadequate post-surgical  
2 care by an outside surgeon and a physician at CSPC. (ECF No. 1 at 3-4.) Second, he  
3 asserts a claim based on improper management of pain (seemingly unrelated to the  
4 surgical procedure) by a different physician at CSPC and a physician's assistant. (Id. at  
5 5-6.)

6 **A. Claim One**

7 Plaintiff alleges: He was diagnosed with "cord atrophy" and sent for surgery at an  
8 outside facility in Bakersfield. The surgeon, Defendant Rahimifar, advised Plaintiff before  
9 the surgery that Plaintiff would need to remain in the hospital two to three day to recover  
10 from the operation. However, Plaintiff was discharged the day of the procedure,  
11 November 23, 2015, and forced to twist, lift, and push himself into a prison sedan,  
12 despite his delicate post-surgical condition.

13 When Plaintiff returned to CSPC, Defendant Alcano did not accommodate him  
14 with a medical bed to stabilize and control his symptoms. As a result of this and the post-  
15 surgical transportation, Plaintiff was forced to return to the Bakersfield hospital. There he  
16 was chained to a gurney for hours before being admitted, only to be discharged early in  
17 the morning on November 24, 2015 and forced, again, to twist, lift, and push himself into  
18 a prison van.

19 When Plaintiff returned to CSPC, Defendant Alcano again failed to accommodate  
20 Plaintiff's condition; he discharged him into general population with an open surgical  
21 wound and without a medical bed.

22 Plaintiff sues for deliberate indifference to his serious medical need and seeks  
23 compensatory and punitive damages from Defendants Rahimifar and Alcano.

24 **B. Claim Two**

25 In his second claim, Plaintiff alleges: Since 2001 Plaintiff has suffered chronic pain  
26 from back injuries, osteoarthritis, and a major rotator cuff tear. In 2014, the CSPC pain  
27 committee approved morphine to treat Plaintiff's pain. On December 12, 2015, however,  
28 Defendant Ogbuehi, a physician's assistant purportedly aware of Plaintiff's need for

1 morphine, abruptly terminated the prescription without conducting an independent  
2 medical evaluation. Without morphine, Plaintiff suffers severe physical pain and mental  
3 anguish.

4 On May 11, 2016, Defendant McCabe, a physician who was aware of all of the  
5 foregoing, failed to intervene or provide Plaintiff with adequate or effective pain treatment.

6 Plaintiff alleges deliberate indifference to a serious medical need and seeks  
7 compensatory and punitive damages from Defendants Ogbuehi and McCabe.

#### 8 **IV. Discussion**

##### 9 **A. Unrelated Claims**

10 It appears from the pleading that Plaintiff is asserting two unrelated claims against  
11 two pairs of defendants in violation of Federal Rule of Civil Procedure 20(a)(2). That  
12 provision permits a plaintiff to sue multiple defendants in the same action only if “any right  
13 to relief is asserted against them jointly, severally, or in the alternative with respect to or  
14 arising out of the same transaction, occurrence, or series of transactions or occurrences,”  
15 and there is a “question of law or fact common to all defendants.” “Thus multiple claims  
16 against a single party are fine, but Claim A against Defendant 1 should not be joined with  
17 unrelated Claim B against Defendant 2. Unrelated claims against different defendants  
18 belong in different suits[.]” George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (citing 28  
19 U.S.C. § 1915(g)).

20 Plaintiff’s claims, as presently stated, do not appear to arise out of the same  
21 transaction or occurrence, or involve common questions of law or fact. Claim One arises  
22 from Plaintiff’s post-operative care in November 2015. (ECF No. 1 at 3-4.) Claim two is  
23 brought against two different Defendants for discontinuation of morphine in 2015 and  
24 2016. (Id. at 4-5.) While both claims may relate to Plaintiff’s back ailment, they arise out  
25 of distinct events and actions of different sets of parties.

26 Since Plaintiff’s claims do not appear to arise out of the same transaction or  
27 involve common questions of law or fact, the complaint will be dismissed with leave to  
28 amend. If Plaintiff elects to amend his complaint, he has two options: (1) He may attempt

1 to bring both claims again in this action and present the Court with facts that demonstrate  
2 that the claims are actually related and arise out of the same transaction or occurrence;  
3 or (2) He may choose which claim he wishes to pursue in this action. If Plaintiff chooses  
4 the second option, he may bring the second, unrelated claim in a separate action. Each  
5 claim must comply with the Court's screening requirements as set out below and state a  
6 cognizable claim for relief.

7 **B. Claim One as against Defendant Rahimifar**

8 Plaintiff's complaint states a cognizable claim for relief against Defendant  
9 Rahimifar for deliberate indifference to a serious medical need.

10 For Eighth Amendment claims arising out of medical care in prison, Plaintiff "must  
11 show (1) a serious medical need by demonstrating that failure to treat [his] condition  
12 could result in further significant injury or the unnecessary and wanton infliction of pain,"  
13 and (2) that "the defendant's response to the need was deliberately indifferent." Wilhelm  
14 v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012) (citing Jett v. Penner, 439 F.3d 1091,  
15 1096 (9th Cir. 2006)).

16 "[D]eliberate indifference to serious medical needs of prisoners constitutes the  
17 unnecessary and wanton infliction of pain, proscribed by the Eighth Amendment. This is  
18 true whether the indifference is manifested by prison doctors in their response to the  
19 prisoner's needs or by prison guards in intentionally denying or delaying access to  
20 medical care or intentionally interfering with the treatment once prescribed." Estelle v.  
21 Gamble, 429 U.S. 97, 104-05 (1976) (internal citations, punctuation and quotation marks  
22 omitted). "Prison officials are deliberately indifferent to a prisoner's serious medical needs  
23 when they 'deny, delay or intentionally interfere with medical treatment.'" Wood v.  
24 Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990) (quoting Hutchinson v. United States,  
25 838 F.2d 390, 394 (9th Cir. 1988)).

26 "A 'serious' medical need exists if the failure to treat a prisoner's condition could  
27 result in further significant injury or the 'unnecessary and wanton infliction of pain.'"  
28 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds,

1 WMX Technologies v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc) (quoting Estelle,  
2 429 U.S. at 104). Serious medical needs include “[t]he existence of an injury that a  
3 reasonable doctor or patient would find important and worthy of comment or treatment;  
4 the presence of a medical condition that significantly affects an individual’s daily  
5 activities; [and] the existence of chronic and substantial pain.” McGuckin, 974 F.2d at  
6 1059-60.

7 To prevail on a claim for deliberate indifference to serious medical needs, a  
8 prisoner must demonstrate that a prison official “kn[ew] of and disregard[ed] an excessive  
9 risk to inmate health or safety; the official must both be aware of the facts from which the  
10 inference could be drawn that a substantial risk of serious harm exists, and he must also  
11 draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994).

12 “In the Ninth Circuit, the test for deliberate indifference consists of two parts. First,  
13 the plaintiff must show a serious medical need by demonstrating that failure to treat a  
14 prisoner’s condition could result in further significant injury or the unnecessary and  
15 wanton infliction of pain. Second, the plaintiff must show the defendant’s response to the  
16 need was deliberately indifferent. This second prong . . . is satisfied by showing (a) a  
17 purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b)  
18 harm caused by the indifference.” Jett, 439 F.3d at 1096 (internal citations, punctuation  
19 and quotation marks omitted); accord, Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir.  
20 2012); Lemire v. CDCR, 726 F.3d 1062, 1081 (9th Cir. 2013).

21 “The indifference to a prisoner’s medical needs must be substantial. Mere  
22 ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this claim. Even gross  
23 negligence is insufficient to establish deliberate indifference to serious medical needs.”  
24 Lemire, 726 F.3d at 1081-82 (internal citations, punctuation and quotation marks  
25 omitted); accord, Cano v. Taylor, 739 F.3d 1214, 1217 (9th Cir. 2014). Moreover, “[a]  
26 difference of opinion between a physician and the prisoner -- or between medical  
27 professionals -- concerning what medical care is appropriate does not amount to  
28 deliberate indifference.” Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (citing

1 Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir.1989)).

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

14 Plaintiff alleges that Defendant Rahimifar told him prior to the surgery that he  
15 would require a two to three day hospital stay for post-operative recovery. (ECF No. 1 at  
16 3.) Plaintiff claims Defendant Rahimifar then displayed deliberate indifference to Plaintiff’s  
17 serious medical needs by discharging him the day of the surgery. (Id. at 3-4.)

18 Plaintiff has sufficiently alleged a serious medical need necessitating surgery and  
19 a two to three day hospital recovery and that same was known to Defendant Rahimifar  
20 who nevertheless ignored Plaintiff’s needs by discharging him immediately after surgery,  
21 aggravating Plaintiff’s symptoms and condition.

22 **C. Claim One as against Defendant Alcanno**

23 Plaintiff’s complaint, as currently drafted, does not state a cognizable claim for  
24 relief against Defendant Alcanno for deliberate indifference and will be dismissed with  
25 leave to amend.

26 As with the claim against Defendant Rahimifar, Plaintiff sufficiently alleges a  
27 serious medical need concerning his post-operative care. He also alleges that both the  
28 lack of a medical bed and his release into the general population with an open wound

1 caused increased pain. This is sufficient to demonstrate the harm element of a deliberate  
2 indifference claim.

3 However, the complaint is unclear as to what Defendant Alcanno's position with  
4 the prison was and how he was responsible for Plaintiff's care after discharge from the  
5 hospital or for releasing Plaintiff to the general population. As noted, Plaintiff must allege  
6 that each named defendant *personally* participated in the deprivation of his rights.  
7 Ashcroft, 556 U.S. at 676-7..

8 Accordingly, Plaintiff's claims against Defendant Alcanno are dismissed with leave  
9 to amend.

10 **D. Claim Two as against Defendant Ogbuehi**

11 Plaintiff's complaint states a cognizable claim for relief against Defendant Ogbuehi  
12 for deliberate indifference to a serious medical need.

13 Plaintiff alleges that the pain committee at CSPC approved his ongoing need for  
14 morphine treatment for chronic severe pain in 2014. (ECF No. 1 at 5.) However, on  
15 December 12, 2015, Defendant Ogbuehi, a physician's assistant, abruptly terminated this  
16 course of treatment without an independent medical examination, causing Plaintiff  
17 increased severe pain. (Id. at 5-6.)

18 The complaint establishes a serious medical need in Plaintiff's chronic pain, as  
19 well as harm in the discontinuation of morphine. Furthermore, Plaintiff alleges that  
20 Defendant Ogbuehi knew of the serious medical need, yet willfully terminated a proven  
21 and approved form of treatment for Plaintiff's detriment without undertaking any kind  
22 medical evaluation to determine the propriety of the action. .

23 Accordingly, Plaintiff alleges a cognizable claim for deliberate indifference, as  
24 Defendant Ogbuehi was in a position to know that morphine treatment was necessary  
25 and consciously disregarded that need through the medically unacceptable  
26 discontinuation of treatment without an independent medical examination.



1           **E.       Claim 2: Defendant McCabe**

2           As with Defendant Alcano, the complaint does not allege Defendant McCabe's  
3 role at the prison, other than stating he is a medical doctor. (ECF No. 1 at 3.) Plaintiff  
4 alleges that Defendant McCabe was aware of Defendant Ogbuehi's decision to end  
5 morphine treatment and failed to intervene, despite having knowledge of Plaintiff's  
6 chronic pain conditions. (Id. at 6.) These allegations are insufficient to state a cognizable  
7 claim for deliberate indifference.

8           While Plaintiff has sufficiently alleged a serious medical need in his chronic pain  
9 condition, he fails to establish any act or omission by Defendant McCabe that harmed  
10 him. Plaintiff's complaint is vague and conclusory in stating that Defendant McCabe was  
11 aware of the serious need, aware of Defendant Ogbuehi's actions to end the morphine  
12 treatment, and aware that this caused Plaintiff harm. In order to establish a deliberate  
13 indifference claim, Plaintiff must allege that each named defendant *personally*  
14 participated in the deprivation of his rights. Ashcroft, 556 U.S. at 676-7. Mere awareness  
15 without a defined role in the prison that imposes a duty on Defendant McCabe to  
16 intervene is insufficient. Without establishing Defendant McCabe's role and what  
17 responsibilities he had to Plaintiff, his lack of action concerning Defendant Ogbuehi's  
18 ending of morphine treatment cannot establish a Constitutional deprivation.

19           Furthermore, even if Defendant McCabe is Defendant Ogbuehi's supervisor, that  
20 does not automatically establish liability for him personally. Liability may not be imposed  
21 on supervisory personnel under the theory of *respondeat superior*, as each defendant is  
22 only liable for his or her own misconduct. Iqbal, 556 U.S. at 676-77; Ewing, 588 F.3d at  
23 1235. Supervisors may only be held liable if they "participated in or directed the  
24 violations, or knew of the violations and failed to act to prevent them." Lemire v. Cal.  
25 Dept. of Corrections & Rehabilitation, 726 F.3d 1062, 1074-75 (9th Cir. 2013). As  
26 currently drafted, the complaint does not allege whether Defendant McCabe was  
27 Defendant Ogbuehi's supervisor, whether Defendant McCabe was Plaintiff's physician, or  
28 whether Defendant McCabe held some other role. Without some definition as to

1 Defendant McCabe's role, the Court cannot determine whether Plaintiff's allegations  
2 against him state a cognizable claim for relief.

3 Accordingly, Plaintiff's claim against Defendant McCabe must be dismissed with  
4 leave to amend.

5 **V. Conclusion**

6 Plaintiff's complaint fails to state a cognizable claim against two of the four named  
7 Defendants. The Court will provide Plaintiff the opportunity to file an amended complaint,  
8 if he believes, in good faith, he can cure the identified deficiencies. Akhtar v. Mesa, 698  
9 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.  
10 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff amends, he  
11 may not change the nature of this suit by adding new, unrelated claims. George v. Smith,  
12 507 F.3d 605, 607 (7th Cir. 2007). If Plaintiff chooses not to amend, and instead wishes  
13 to proceed only against Defendants Rahimifar and Ogbuehi, then he must so notify the  
14 Court.

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

19 Furthermore, if Claims 1 and 2 are unrelated, as the Court found here, then  
20 Plaintiff must choose one or the other to pursue in this action, while pursuing the other in  
21 a separate case.

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

- 23 1. Plaintiff's complaint (ECF No. 1) is DISMISSED with leave to amend;
- 24 2. The Clerk's Office shall send Plaintiff a blank civil rights complaint form and  
25 a copy of his complaint filed June 5, 2017;
- 26 3. Within **thirty (30) days** from the date of service of this order, Plaintiff must  
27 file an amended complaint curing the deficiencies identified by the Court in  
28 this order or a notice that he wishes to proceed only on Claim 1 against

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Defendant Rahimifar; and

4. If Plaintiff fails to file an amended complaint or notice that he wishes to only proceed against Dr. Rahimifar, then this action may be dismissed without prejudice.

IT IS SO ORDERED.

Dated: October 15, 2017

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE