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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
8

9 DAMON NEWQUIST,

Case No. 1:17-cv-01150-SKO (PC)

10 Plaintiff,

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

11 v.

(Doc. 1)

12 SOA, et al.,

TWENTY-ONE (21) DAY DEADLINE

13 Defendants.

14
15 **INTRODUCTION**

16 **A. Background**

17 Plaintiff, Damon Newquist, is a state prisoner proceeding *pro se* and *in forma pauperis* in
18 this civil rights action pursuant to 42 U.S.C. § 1983. As discussed below, Plaintiff fails to state a
19 cognizable claim upon which relief may be granted and the Complaint is **DISMISSED** with leave
20 to file a first amended complaint.

21 **B. Screening Requirement and Standard**

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

1 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).
2 A complaint will be dismissed if it lacks a cognizable legal theory or fails to allege sufficient facts
3 under a cognizable legal theory. *See Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699
4 (9th Cir. 1990).

5 **C. Pleading Requirements**

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

7 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
8 exceptions,” none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534
9 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain “a short and plain
10 statement of the claim showing that the pleader is entitled to relief . . .” Fed. R. Civ. Pro. 8(a).
11 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and
12 the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512.

13 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
14 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
15 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
16 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
17 plausible on its face.’” *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
18 allegations are accepted as true, but legal conclusions are not. *Iqbal* at 678; *see also Moss v. U.S.*
19 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

20 While “plaintiffs [now] face a higher burden of pleadings facts . . . ,” *Al-Kidd v. Ashcroft*,
21 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of *pro se* prisoners are still construed liberally
22 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
23 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations,”
24 *Neitze v. Williams*, 490 U.S. 319, 330 n.9 (1989), “a liberal interpretation of a civil rights
25 complaint may not supply essential elements of the claim that were not initially pled,” *Bruns v.*
26 *Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*,
27 673 F.2d 266, 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences,
28 *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and

1 citation omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient,
2 and “facts that are ‘merely consistent with’ a defendant’s liability” fall short of satisfying the
3 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

4 If he chooses to file a first amended complaint, Plaintiff should make it as concise as
5 possible in **no more than twenty-five (25) pages**. Plaintiff should state which of his
6 constitutional rights he believes were violated by each Defendant and the facts that support each
7 contention. Plaintiff need not and should not cite legal authority for his claims in a first amended
8 complaint. If Plaintiff files a first amended complaint, his factual allegations will be screened
9 under the legal standards and authorities set forth in this order.

10 2. Exhibits

11 Although Plaintiff refers to exhibits in the Complaint, no exhibits are attached. The Court
12 is not a repository for the parties’ evidence. Originals, or copies of evidence (i.e., prison or
13 medical records, witness affidavits, etc.) need not be submitted until the course of litigation brings
14 the evidence into question--for example, on a motion for summary judgment, at trial, or when
15 requested by the Court. If Plaintiff attaches exhibits to his amended complaint, each exhibit must
16 be specifically referenced. Fed. R. Civ. Pro. 10(c). For example, Plaintiff must state “see Exhibit
17 A” or something similar in order to direct the Court to the specific exhibit Plaintiff is referencing.
18 If the exhibit consists of more than one page, Plaintiff must also reference the specific page of the
19 exhibit (i.e. “See Exhibit A, page 3”).

20 At this point, the submission of evidence is premature as Plaintiff is only required to state
21 a *prima facie* claim for relief. Plaintiff is reminded that, for screening purposes, the Court must
22 assume that Plaintiff’s factual allegations are true. It is unnecessary for a plaintiff to submit
23 exhibits in support of the allegations in a complaint.

24 3. Linkage Requirement

25 The Civil Rights Act under which this action was filed provides:

26 Every person who, under color of [state law] . . . subjects, or causes to
27 be subjected, any citizen of the United States . . . to the deprivation of
28 any rights, privileges, or immunities secured by the Constitution . . .
shall be liable to the party injured in an action at law, suit in equity, or
other proper proceeding for redress.

1 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between
2 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See*
3 *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362
4 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a
5 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
6 in another’s affirmative acts or omits to perform an act which he is legally required to do that
7 causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
8 Cir. 1978). To state a claim for relief under section 1983, Plaintiff must link each named
9 defendant with some affirmative act or omission that demonstrates a violation of Plaintiff’s
10 federal rights.

11 Although Plaintiff names Dr. Chen as a defendant in this action, he fails to link Dr. Chen
12 to any of his factual allegations. Plaintiff must clearly identify which Defendants he believes are
13 responsible for each violation of his constitutional rights and set forth the supporting facts--as his
14 Complaint must put each Defendant on notice of Plaintiff’s claims against him or her. *See Austin*
15 *v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004).

16 **DISCUSSION**

17 **A. Plaintiff’s Allegations**

18 Plaintiff is currently incarcerated at Kern Valley State Prison (“KVSP”), in Delano,
19 California. Plaintiff names Dr. Soa and Dr. Chen as the only defendants in this action and seeks
20 declaratory and injunctive relief, as well as monetary damages.

21 Plaintiff alleges that on December 17, 2015, he was attacked by inmates and sustained
22 numerous injuries including facial fractures. The next day, Plaintiff was seen by a doctor at San
23 Joaquin General Hospital who recommended surgery for Plaintiff’s facial fractures. On January
24 21, 2016, Plaintiff had facial realignment surgery by Dr. Alexander Ieronomos (not a defendant)
25 at San Joaquin General Hospital. Dr. Ieronomos prescribed morphine for Plaintiff’s pain.

26 On May 27, 2016, Plaintiff was transferred to KVSP where Dr. Soa discontinued
27 Plaintiff’s morphine without tapering or even seeing Plaintiff to assess his condition. As a result,
28

1 Plaintiff suffered excruciating pain in his face and neck and went through withdrawals, ending up
2 in the Central Treatment Center (“CTC”) for withdrawal therapy.

3 On June 27, 2016, Dr. Soa determined that Plaintiff’s face was healed without deformity
4 and that facial realignment was not necessary. However, Plaintiff’s face has deformities, he has a
5 great deal of pain in his face and neck, his jaw locks out of place and he must use both hands to
6 move it back into place, there is a large jaw bone sticking out on the right side of Plaintiff’s face
7 which pops out of joint when Plaintiff talks or eats, a large knotted bone can be felt moving up
8 and down in Plaintiff’s face, and it is difficult for Plaintiff to fully open his mouth. Dr. Soa
9 nonetheless refused to schedule Plaintiff for a MRI to determine the true status of Plaintiff’s facial
10 fracture. As a result of Plaintiff’s inability to obtain further needed realignment surgery, Plaintiff
11 alleges he is sustaining injuries such as mild degenerative disk disease at C6 and C7. Plaintiff
12 alleges these circumstances violated his rights under the Eighth Amendment.

13 As discussed in detail below, Plaintiff’s allegations do not state a cognizable claim under
14 the Eighth Amendment. However, he is provided the applicable legal standards for his stated
15 claims and an opportunity to file an amended complaint.

16 **B. Legal Standards**

17 **1. Plaintiff Does Not State a Cognizable Eighth Amendment Claim**

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). For screening purposes, the fractures
9 of Plaintiff’s facial bones are accepted as 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 / / /

1 Plaintiff alleges that Dr. Soa discontinued morphine without tapering or examining him to
2 assess his condition, and that Dr. Soa refused to request an MRI for Plaintiff's face. Plaintiff's
3 discontent with these actions or inactions by Dr. Soa, without more, simply amount to a
4 difference of opinion between Plaintiff and Dr. Soa regarding Plaintiff's diagnosis, treatment and
5 medical records. This is insufficient to state a cognizable Eighth Amendment violation. *See*
6 *Estelle v. Gamble*, 429 U.S. 97, 107 (1976).

7 It is true that the Ninth Circuit has found deliberate indifference where prison officials
8 "deliberately ignore the express orders of a prisoner's prior physician for reasons unrelated to the
9 medical needs of the prisoner." *Hamilton v. Endell*, 981 F.2d 1062, 1066 (9th Cir. 1992)
10 (reversing summary judgment where prison officials forced prisoner to endure a plane flight that
11 resulted in ear injury, in direct contravention of a treating physician's previous orders) *overruled*
12 *in part on other grounds by Saucier v Katz*, 566 U.S. 194 (2001); *Ortiz v. City of Imperial*, 884
13 F.2d 1312, 1314 (9th Cir. 1989) (per curium) (reversing summary judgment where medical staff
14 knew that pretrial detainee had head injury, but prescribed contraindicated medications,
15 disregarding evidence of complications to which they had been specifically alerted by private
16 treating physician); *Tolbert v. Eyman*, 434 F.2d 625 (9th Cir. 1970) (finding cognizable claim for
17 deliberate indifference where warden refused to authorize prisoner's receipt of medicine, which
18 was required to prevent serious harm to his health, that had been previously prescribed by a
19 physician). However, Plaintiff's allegations against Dr. Soa are not cognizable as he fails to show
20 that Dr. Soa interfered with Dr. Ieronomos' treatment directives following surgery. Thus,
21 Plaintiff does not state a cognizable claim against Dr. Soa for deliberate indifference to his
22 serious medical needs in violation of the Eight Amendment.

23 **2. Plaintiff Does Not State a Cognizable Claim Against Dr. Chen**

24 Although not linked to any of Plaintiff's factual allegations, Plaintiff may have named Dr.
25 Chen as a defendant based on his supervisory position. Generally, supervisory personnel are not
26 liable under section 1983 for the actions of their employees under a theory of *respondeat superior*
27 -- when a named defendant holds a supervisory position, the causal link between him and the
28 claimed constitutional violation must be specifically alleged. *See Fayle v. Stapley*, 607 F.2d 858,

1 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
2 941 (1979). To state a claim for relief under this theory, Plaintiff must allege some facts to
3 support a claim that supervisory defendants either: personally participated in the alleged
4 deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or
5 promulgated or “implemented a policy so deficient that the policy ‘itself is a repudiation of
6 constitutional rights’ and is ‘the moving force of the constitutional violation.’” *Hansen v. Black*,
7 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045
8 (9th Cir. 1989).

9 A “plaintiff must show the supervisor breached a duty to plaintiff which was the
10 proximate cause of the injury. The law clearly allows actions against supervisors under section
11 1983 as long as a sufficient causal connection is present and the plaintiff was deprived under
12 color of law of a federally secured right.” *Redman v. County of San Diego*, 942 F.2d 1435, 1447
13 (9th Cir. 1991)(internal quotation marks omitted)(abrogated on other grounds by *Farmer v.*
14 *Brennan*, 511 U.S. 825 (1994)).

15 “The requisite causal connection can be established . . . by setting in motion a series of
16 acts by others,” *id.* (alteration in original; internal quotation marks omitted), or by “knowingly
17 refus[ing] to terminate a series of acts by others, which [the supervisor] knew or reasonably
18 should have known would cause others to inflict a constitutional injury,” *Dubner v. City & Cnty.*
19 *of San Francisco*, 266 F.3d 959, 968 (9th Cir.2001). “A supervisor can be liable in his individual
20 capacity for his own culpable action or inaction in the training, supervision, or control of his
21 subordinates; for his acquiescence in the constitutional deprivation; or for conduct that showed a
22 reckless or callous indifference to the rights of others.” *Watkins v. City of Oakland*, 145 F.3d
23 1087, 1093 (9th Cir.1998) (internal alteration and quotation marks omitted). Further, to be liable
24 in a supervisory capacity, Plaintiff must first state cognizable claims against Dr. Chen’s
25 subordinates, which as discussed above, Plaintiff has not done.

26 **3. Declaratory and Injunctive Relief**

27 Because Plaintiff’s claims for damages necessarily entail a determination whether his
28 rights were violated, Plaintiff’s separate request for declaratory relief is properly dismissed since

1 it is subsumed by those claims. *Rhodes v. Robinson*, 408 F.3d 559, 565-66 n.8 (9th Cir. 2004).

2 Plaintiff seeks injunctive relief via medical treatment for his facial fractures. Federal
3 courts are courts of limited jurisdiction and in considering a request for preliminary injunctive
4 relief, the Court is bound by the requirement that as a preliminary matter, it have before it an
5 actual case or controversy. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665
6 (1983); *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454
7 U.S. 464, 471 (1982). If the Court does not have an actual case or controversy before it, it has no
8 power to hear the matter in question. *Id.*

9 As a threshold matter, Plaintiff must establish that he has standing to seek preliminary
10 injunctive relief. *Summers v. Earth Island Institute*, 555 U.S. 488, 493-94, 129 S.Ct. 1142, 1149
11 (2009); *Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir. 2010). Plaintiff “must show that
12 he is under threat of suffering an ‘injury in fact’ that is concrete and particularized; the threat
13 must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to
14 challenged conduct of the defendant; and it must be likely that a favorable judicial decision will
15 prevent or redress the injury.” *Summers*, 555 U.S. at 493 (citation and quotation marks omitted);
16 *Mayfield*, 599 F.3d at 969. Requests for prospective relief are limited by 18 U.S.C. §
17 3626(a)(1)(A) of the Prison Litigation Reform Act, which requires that the Court find the “relief
18 [sought] is narrowly drawn, extends no further than necessary to correct the violation of the
19 Federal right, and is the least intrusive means necessary to correct the violation of the Federal
20 right.”

21 The pendency of this action does not give the Court jurisdiction over prison officials in
22 general or over Plaintiff’s medical issues. *Summers*, 555 U.S. at 492-93; *Mayfield*, 599 F.3d at
23 969. The Court’s jurisdiction is limited to the parties in this action and to the cognizable legal
24 claims upon which this action may eventually proceed. *Id.*

25 **ORDER**

26 For the reasons set forth above, Plaintiff’s Complaint is dismissed with leave to file a first
27 amended complaint within **twenty-one (21) days**. If Plaintiff needs an extension of time to
28 comply with this order, Plaintiff shall file a motion seeking an extension of time no later than

1 **twenty-one (21) days** from the date of service of this order.

2 Plaintiff must demonstrate in any first amended complaint how the conditions complained
3 of have resulted in a deprivation of Plaintiff's constitutional rights. *See Ellis v. Cassidy*, 625 F.2d
4 227 (9th Cir. 1980). The first amended complaint must allege in specific terms how each named
5 defendant is involved. There can be no liability under section 1983 unless there is some
6 affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo*
7 *v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v.*
8 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

9 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and
10 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
11 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*
12 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
13 [sufficient] to raise a right to relief above the speculative level . . ." *Twombly*, 550 U.S. 127, 555
14 (2007) (citations omitted).

15 Plaintiff is further reminded that an amended complaint supercedes the original, *Lacey v.*
16 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
17 2012) (en banc), and must be "complete in itself without reference to the prior or superceded
18 pleading," Local Rule 220.

19 The Court provides Plaintiff with opportunity to amend to cure the deficiencies identified
20 by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff
21 may not change the nature of this suit by adding new, unrelated claims in his first amended
22 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

23 Based on the foregoing, it is **HEREBY ORDERED** that:

- 24 1. Plaintiff's Complaint is dismissed, with leave to amend;
- 25 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 26 3. **Within twenty-one (21) days** from the date of service of this order, Plaintiff must
27 file a first amended complaint curing the deficiencies identified by the Court in
28 this order or a notice of voluntary dismissal; and

4. If Plaintiff fails to comply with this order, it will be recommended that this action be dismissed for failure to obey a court order and for failure to state a cognizable claim.

IT IS SO ORDERED.

Dated: November 21, 2017

181 Sheila K. Oberlo

UNITED STATES MAGISTRATE JUDGE