

BACKGROUND

A. Procedural Posture

Plaintiff filed his initial complaint on October 11, 2019. (Doc. No. 1). The then-assigned magistrate judge granted Plaintiff's motion for leave to proceed *in forma pauperis* and screened Plaintiff's initial complaint, found it failed to state any cognizable claims for relief, and granted Plaintiff leave to file a first amended complaint. (Doc. Nos. 15, 16). Plaintiff filed a First Amended Complaint. (Doc. No. 18, "FAC"). On July 6, 2020, the magistrate judge then screened the FAC, found it stated cognizable Eighth Amendment claims for failure to protect and intervene against defendants John Doe and Philips, and a medical deliberate indifference claim against defendant Philips, but no other claims. (Doc. No. 20 at 6). Plaintiff was directed to choose between (1) proceeding only on the claims found cognizable by the magistrate judge and voluntarily dismiss all other defendants, (2) filing a second amended complaint to add facts in an attempt to make out additional claims or claims against additional defendants, or (3) standing on his FAC subject to dismissal of claims and defendants consistent with the screening order. (*Id.*). Plaintiff notified the Court he wished to proceed on his FAC. (Doc. No. 21). In his notice, Plaintiff requested the Court to reconsider its findings in the second screening order, arguing that his claims against all defendants sufficiently state a claim for relief. (*Id.*). The undersigned re-reviewed the FAC and finds it states additional claims against Jane Doe and the STRH Administrator/Warden, in addition to the other claims previously sanctioned by the former magistrate judge.

B. Summary of FAC

Plaintiff is currently incarcerated at High Desert State Prison. (Doc. No. 25). The FAC alleges constitutional violations arising from Plaintiff's confinement at Pleasant Valley State Prison. (Doc. No. 18). The FAC identifies the following as defendants: "Department of Corrections" ("CDCR"); correctional officer LT Stiles, correctional officer Philips; correctional officer Dunlip; correctional officer Frenosco; correctional officer John Doe; the STRH Administrator/Warden; and mental health group facilitator Jane Doe. The claims in the FAC stem from an inmate group session where inmate Mejia attacked Plaintiff with a razor blade while

1 Plaintiff was securely chained to a chair. According to the facts alleged in the FAC, defendants
2 John Doe, Philips, and Jane Doe failed to intervene prior to or during the attack. The FAC also
3 alleges that CDCR does not provide adequate training to its staff to prevent hostile situations and
4 does not train its staff in proper search protocols. (*Id.* at 4). According to the FAC, during the
5 group meeting a week prior to the incident, Jane Doe encouraged other inmates to attack Plaintiff
6 by telling them Plaintiff had been accused of indecent exposure, which resulted in the sanction of
7 the “good movies” being removed from the group. (*Id.*).

8 Plaintiff states John Doe and Philips are both large in size and that Mejia is small in
9 stature. (*Id.* at 7). Philips searched Mejia prior to the group but did not use a metal detector on
10 him or conduct a strip search. (*Id.* at 8). Plaintiff states that the group was held in a controlled
11 setting where inmates were chained with ankle and waist restraints in an effort to keep inmates
12 from having contact with each other. (*Id.* at 6).

13 Plaintiff claims John Doe caused a hostile situation by asking if anyone needed to leave
14 from the group session, allowing inmate Mejia to get out of his chair, and expecting a violent
15 situation to occur. (*Id.*). John Doe and Philips failed to stop Mejia from hopping towards
16 Plaintiff and they did not call out a command for Mejia to stop coming towards Plaintiff. (*Id.*).
17 John Doe and Philips took no precautionary measures to prevent Mejia from making harmful
18 contact with Plaintiff. (*Id.*). Although John Doe saw Mejia had a razor blade, he failed to press
19 his alarm button. (*Id.*). Mejia then used the razor blade to attack Plaintiff. (*Id.* at 7). At that
20 point, John Doe said “stop or I’ll press the [alarm] button.” (*Id.*). But John Doe, Philips, and
21 Jane Doe did not press the alarm button. (*Id.*). Plaintiff claims that John Doe and Philips could
22 have used pepper spray on Mejia, struck Mejia with a baton, or kicked Mejia to stop the attack,
23 but they failed to take any action. (*Id.*). Plaintiff states that it was apparent to John Doe and
24 Philips that Mejia was attacking Plaintiff because blood was “spraying everywhere.” (*Id.*).
25 Plaintiff attempted to bite Mejia’s fingers in order to stop the attack. (*Id.*).

26 Two minutes after the incident, Stiles came into the room and asked, “Why is [Plaintiff]
27 still chained?” (*Id.* at 9). A medical gurney had been waiting for Plaintiff for about one minute
28 after the incident. (*Id.*). Philips did not immediately unbolt Plaintiff from his chair and Plaintiff

1 lost consciousness and almost bled to death while he was waiting for medical attention. (*Id.*).
2 Stiles unbolted Plaintiff from his chair. (*Id.*).

3 Plaintiff claims that the STRH Administrator/Warden and Stiles mistakenly allowed Mejia
4 and Plaintiff to be in the same group and did not ensure that the staff used proper safety protocols,
5 such as searching inmates with metal detectors. (*Id.* at 8). Plaintiff states that Dunlip, Frenosco,
6 Stiles, and Philips should use proper search protocols, including using metal detectors to search
7 the inmates in the group. (*Id.*).

8 As relief, Plaintiff seeks a court order directing CDCR to properly train their staff to
9 ensure a similar situation does not happen again. (*Id.* at 9). Plaintiff also seeks \$23,000,000 in
10 compensatory damages each from Philips, John Doe, and Jane Doe; an additional \$125,000 from
11 each Defendant; a declaration that Plaintiff's constitutional rights were violated; and costs of this
12 suit. (*Id.*).

13 **APPLICABLE LAW**

14 **A. Screening Requirements and Federal Rule of Civil Procedure 8**

15 Because Plaintiff commenced this action while he was incarcerated, he is subject to the
16 Prison Litigation Reform Act ("PLRA"), that requires, *inter alia*, that the court screen a complaint
17 that seeks relief against a governmental entity, its officers, or its employees under 28 U.S.C. §
18 1915A before directing service upon any defendant. This requires the court to identify any
19 cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, that
20 fails to state a claim upon which relief may be granted, or that seeks monetary relief from a
21 defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2); *see also* 28
22 U.S.C. § 1915(e)(2)(b)(ii) (governing actions proceeding *in forma pauperis*).

23 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
24 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th
25 Cir. 1984). Claims are frivolous where they are based on an indisputably meritless legal theory or
26 where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. A claim fails to state
27 a claim upon which relief may be granted if it appears that the plaintiff can prove no set of facts
28 in support of the claim that would entitle him to relief. *Hishon v. King & Spalding*, 467 U.S. 69,

1 73 (1984); *Palmer v. Roosevelt Lake Log Owners Ass'n, Inc.*, 651 F.2d 1289, 1294 (9th Cir.
2 1981). Examples of immunity that would preclude relief during screening, include, but are not
3 limited to, quasi-judicial immunity, sovereign immunity, or qualified immunity. Additionally, a
4 prisoner plaintiff may not recover monetary damages absent a showing of physical injury. *See* 42
5 U.S.C. § 1997e(e). In other words, to recover monetary damages, a plaintiff must allege physical
6 injury that need not be significant but must be more than *de minimis*, except when involving First
7 Amendment claims. *Oliver v. Keller*, 289 F.3d 623, 626-28 (9th Cir. 2002) (surveying other
8 circuit courts for the first time to address injury requirement for monetary damages, and agreeing
9 with the Second, Fifth, and Eleventh Circuits on PLRA's injury requirement).

10 At the screening stage, the court accepts the factual allegations in the complaint as true,
11 *Hosp. Bldg. Co. v. Rex Hosp. Tr.*, 425 U.S. 738, 740 (1976), construes the complaint in the light
12 most favorable to the plaintiff, and resolves all doubts in the plaintiff's favor. *Jenkins v.*
13 *McKeithen*, 395 U.S. 411, 421 (1969); *Bernhardt v. L.A. County*, 339 F.3d 920, 925 (9th Cir.
14 2003). The court is not required to accept as true conclusory allegations, unreasonable inferences,
15 or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.
16 1981). Critical to evaluating a constitutional claim is whether it has an arguable legal and factual
17 basis. *See Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989); *Franklin*, 745 F.2d at 1227.

18 The Federal Rules of Civil Procedure require only that the complaint contain "a short and
19 plain statement of the claim showing the pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2).
20 Nonetheless, a claim must be facially plausible to survive screening, which requires sufficient
21 factual detail to allow the court to reasonably infer that each named defendant is liable for the
22 misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Moss v. U.S. Secret Service*,
23 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not
24 sufficient, and mere consistency with liability falls short of satisfying the plausibility standard.
25 *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969. Although detailed factual allegations are not
26 required, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
27 statements, do not suffice," *Iqbal*, 556 U.S. at 678 (citations omitted), and courts "are not required

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1 to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir.
2 2009) (internal quotation marks and citation omitted).

3 Finally, the Rules permit a complaint to include all *related claims* against a party and
4 permit joinder of all defendants alleged to be liable for the “same transaction, occurrence, or
5 series of transactions or occurrences” where “any question of law or fact common to all
6 defendants will arise in the action.” Fed. R. Civ. P. 18(a) and 20(a)(2) (emphasis added). But the
7 Rules do not permit conglomeration of unrelated claims against unrelated defendants in a single
8 lawsuit. Unrelated claims must be filed in separate lawsuits.

9 If an otherwise deficient pleading could be cured by the allegation of other facts, the *pro*
10 *se* litigant is entitled to an opportunity to amend their complaint before dismissal of the action.
11 *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v. Department of*
12 *Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). However, it is not the role of the Court to advise a *pro se*
13 litigant on how to cure the defects. Such advice “would undermine district judges’ role as
14 impartial decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at
15 1131 n.13.

16 **B. Section 1983**

17 Section 1983 allows a private citizen to sue for the deprivation of a right secured by
18 federal law. *See* 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). To
19 state a claim under § 1983, a plaintiff must show that a defendant acting under color of state law
20 caused an alleged deprivation of a right secured by federal law. *See* 42 U.S.C. § 1983; *Soo Park*
21 *v. Thompson*, 851 F.3d 910, 921 (9th Cir. 2017). The plaintiff can satisfy the causation
22 requirement by showing either: (1) the defendant’s “personal involvement” in the alleged
23 deprivation or (2) a “sufficient causal connection” between the defendant’s conduct as a
24 supervisor and the alleged deprivation. *See King v. Cty. of Los Angeles*, 885 F.3d 548, 559 (9th
25 Cir. 2018).

26 The statute plainly requires that there be an actual connection or link between the actions
27 of the defendants and the deprivation alleged to have been suffered by plaintiff. *See Monell v.*
28 *Dep’t of Soc. Servs.*, 436 U.S. 658, (1978); *Rizzo v. Goode*, 423 U.S. 362, (1976). The Ninth

1 Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right,
2 within the meaning of section 1983, if he does an affirmative act, participates in another’s
3 affirmative acts or omits to perform an act which he is legally required to do that causes the
4 deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

5 ANALYSIS

6 A. Defendant CDCR

7 As an initial matter, the FAC again names CDCR as a defendant, even though the Court
8 has explained to Plaintiff (*see* Doc. No. 16 at 6; Doc. No. 20 at 3) that he cannot sue this state
9 agency under § 1983. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990); *Sato v. Orange Cty. Dep’t*
10 *of Educ.*, 861 F.3d 923, 928 (9th Cir. 2017) (finding that state agencies are immune under the
11 Eleventh Amendment from private damages or suits for injunctive relief brought in federal court).
12 Thus, the undersigned recommends CDCR be dismissed as a named defendant.

13 B. Defendants Stiles, Dunlip, and Frenosco

14 The undersigned finds the FAC fails to state a claim against Stiles, Dunlop, and Frenosco.
15 The FAC contains no allegations from which the Court can discern how these defendants’ actions
16 caused the harm alleged, as required by § 1983. The FAC does not attribute any specific action to
17 Dunlip and Frenosco which caused a deprivation of Plaintiff’s constitutional rights. The
18 allegations against Stiles are that (1) he arrived to take Plaintiff for medical care; (2) he
19 admonished Philips because Plaintiff was still in restraints; and (3) he removed Plaintiff’s
20 restraints so he could be removed from the chair and placed on the gurney. These allegations
21 indicate Stiles took steps to quickly help Plaintiff. None of these allegations amount to a
22 violation of Plaintiff’s constitutional rights. The only other allegation against Stiles is that he,
23 along with the STRH Administrator/Warden “oversee classification” and Plaintiff and Mejia
24 should not have been placed in the same group. (*See* Doc. No. 18 at 8). The FAC fails to include
25 any facts as to why Plaintiff and Mejia should not have been permitted to be together in the same
26 group. Nor does it allege that either Stiles or the STRH Administrator/Warden had knowledge of
27 any facts as to why Plaintiff and Mejia should not have been placed together in the same group.
28 Thus, this allegation is vague and insufficient to attribute any liability to Stiles for placing

1 Plaintiff in the same group as Mejia. The undersigned recommends that Stiles, Dunlip, and
2 Frenosco be dismissed as defendants from this action.

3 **C. Defendants John Doe, Philips, and Jane Doe - Failure to Protect or Intervene**

4 Under the Eighth Amendment, prison officials have a duty to protect prisoners from
5 violence at the hands of other prisoners. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994). “[A]
6 prison official violates the Eighth Amendment only when two requirements are met. First, the
7 deprivation alleged must be, objectively, sufficiently serious; a prison official’s act or omission
8 must result in the denial of the minimal civilized measure of life’s necessities.” *Id.* at 834
9 (internal quotation marks and citations omitted). “For a claim . . . based on a failure to prevent
10 harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of
11 serious harm.” *Id.*

12 Second, the prison official must subjectively have a sufficiently culpable state of mind,
13 “one of deliberate indifference to inmate health or safety.” *Id.* (internal quotation marks and
14 citations omitted). The official is not liable under the Eighth Amendment unless he “knows of
15 and disregards an excessive risk to inmate health or safety; the official must both be aware of
16 facts from which the inference could be drawn that a substantial risk of serious harm exists, and
17 he must also draw the inference.” *Id.* at 837. Then the official must fail to take reasonable
18 measures to abate the substantial risk of serious harm. *Id.* at 847. Mere negligent failure to
19 protect an inmate from harm is not actionable under § 1983. *Id.* at 835.

20 Relatedly, a prisoner’s rights can be violated by a prison official’s deliberate indifference
21 in failing to intervene. *Robins v. Meecham*, 60 F.3d 1436, 1442 (9th Cir. 1995). However, an
22 officer can only be held liable for failing to intervene if he had a realistic opportunity to intercede
23 and failed to do so. *Cunningham v. Gates*, 229 F.3d 1271, 1289-90 (9th Cir. 2000).

24 Here, the FAC sufficiently alleges facts that correctional officers Philips and John Doe
25 and mental health facilitator Jane Doe were aware of facts regarding Mejia’s imminent attack,
26 failed to protect Plaintiff from the attack, and then failed to intervene at any point during the
27 attack. Philips was responsible for searching Mejia before the group session and failed to either
28 use a metal detector or conduct a strip search, either of which would have likely uncovered the

1 metal razor blade that was used to attack Plaintiff. Plaintiff's description of the restraints used on
2 the inmates and of the circumstances under which he was attacked also suggest that both Philips
3 and John Doe had realistic opportunities to intercede, including by physically restraining and/or
4 pepper spraying inmate Mejia. Further, the FAC contains allegations that Jane Doe, the mental
5 health group facilitator, made statements that Plaintiff was responsible for the inmates' loss of
6 good movies, encouraged other inmates to attack Plaintiff, was in the room when Plaintiff was
7 attacked and failed to trigger the alarm. The undersigned finds the FAC provides facts that show
8 each officer was aware of the substantial risk of harm to Plaintiff but failed to protect him. The
9 undersigned recommends that the FAC be permitted to proceed on Plaintiff's Eighth Amendment
10 claims against Defendants John Doe, Philips, and Jane Doe for failure to protect and/or intervene.

11 **D. Defendant Philips - Medical Deliberate Indifference**

12 The FAC appears to raise a claim for medical deliberate indifference against Philips
13 because Philips did not immediately remove Plaintiff's restraints after the attack. Plaintiff was
14 still fastened to his chair when Stiles came to retrieve Plaintiff. Because of this delay, Plaintiff
15 lost blood unnecessarily and lost consciousness.

16 There is a two-part test for deliberate indifference: "First, the plaintiff must show a serious
17 medical need by demonstrating that failure to treat [his] condition could result in further
18 significant injury or the unnecessary and wanton infliction of pain. Second, the plaintiff must
19 show the defendant's response to the need was deliberately indifferent." *Wilhelm v. Rotman*, 680
20 F.3d 1113, 1122 (9th Cir. 2012) (internal quotation marks and citation omitted). "This second
21 prong—defendant's response to the need was deliberately indifferent—is satisfied by showing (a)
22 a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm
23 caused by the indifference." *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal
24 citations omitted).

25 The FAC has alleged enough facts to state a claim for medical deliberate indifference
26 against Defendant Philips. Plaintiff had an obvious medical need, as Defendant Philips had just
27 witnessed Plaintiff getting attacked with a razor blade. Delaying Plaintiff's treatment by leaving
28 him chained to the chair while he bled heavily enough to lose consciousness is sufficient inaction

1 on the part of Philips to state a claim against him for deliberate indifference. The undersigned
2 recommends that the Eight Amendment claim for deliberate indifference in the FAC proceed
3 against Defendant Philips.

4 **E. Defendant Warden**

5 The theory of *respondeat superior* does not support a finding of liability against a
6 supervisor for the actions of his subordinates under 42 U.S.C. § 1983. *Jeffers v. Gomez*, 267 F.3d
7 895, 915 (9th Cir. 2001) (citing *Hansen v. Black*, 885 F.2d 642, 645-46 (9th Cir. 1989)).
8 Supervisory liability only attaches under § 1983 when: (1) a supervisor personally is involved in
9 the constitutional deprivation, or (2) there is a sufficient causal connection between some
10 wrongful conduct by the supervisor and the constitutional violation. *Id.*

11 A supervisor can be liable under a “failure to train” theory in limited circumstances. *See*
12 *City of Canton v. Harris*, 489 U.S. 378, 387-90 (1989). These circumstances exist “where the
13 failure to train amounts to deliberate indifference to the rights of persons with whom the
14 [government officers] come into contact.” *Id.* at 388. “[F]or liability to attach . . . [,] the
15 identified deficiency in [the] training program must be closely related to the ultimate injury. Thus
16 . . . , [a plaintiff] must still prove that the deficiency in training actually caused the . . . officers’
17 indifference” to the plaintiff’s constitutional rights. *Id.* at 391. In order to state a claim for failure
18 to train, a plaintiff must allege that “in light of the duties assigned to specific officers or
19 employees the need for more or different training is so obvious, and the inadequacy so likely to
20 result in the violation of constitutional rights, that the policymakers [] can reasonably be said to
21 have been deliberately indifferent to the need.” *Id.* at 390.

22 Here, Plaintiff claims that there was improper training of staff and a failure to ensure
23 implementation of safety search and response protocols at the prison. (Doc. No. 18 at 4).
24 Specifically, Plaintiff states training is delivered to staff in “packet form” and contends the
25 training instead should be “hands-on” and held every twelve months. (*Id.*). Plaintiff avers that
26 the prison does not maintain and update staff training. (*Id.* at 8). In support of his failure to train
27 argument, Plaintiff faults the Warden for failing to ensure that staff search inmates properly, both
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NOTICE TO PARTIES

These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, a party may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

Dated: December 21, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE