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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NORMAN RANKINS,  
Plaintiff,  
v.  
ALEXANDER LIU et al.,  
Defendants.

No. 2:15-cv-1164 KJM AC P (TEMP)

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
2 1915(b)(2).

### 3 **SCREENING REQUIREMENT**

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

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
12 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
16 Cir. 1989); Franklin, 745 F.2d at 1227.

17 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
18 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
19 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
20 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
21 However, in order to survive dismissal for failure to state a claim a complaint must contain more  
22 than "a formulaic recitation of the elements of a cause of action;" it must contain factual  
23 allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550  
24 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
25 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
26 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
27 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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1 The Civil Rights Act under which this action was filed provides as follows:

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

7 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
8 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
9 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
10 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
11 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or omits  
12 to perform an act which he is legally required to do that causes the deprivation of which  
13 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

14 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of  
15 their employees under a theory of respondeat superior and, therefore, when a named defendant  
16 holds a supervisory position, the causal link between him and the claimed constitutional  
17 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);  
18 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations  
19 concerning the involvement of official personnel in civil rights violations are not sufficient. See  
20 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

### 21 **PLAINTIFF’S COMPLAINT**

22 In the present case, plaintiff has identified as defendants Dr. Alexander Liu and California  
23 Medical Facility (“CMF”) Chief Medical Officer Joseph Bick. Plaintiff alleges that prison  
24 officials at CMF referred him to San Joaquin County Hospital where he met with defendant Liu.  
25 Plaintiff explained to defendant Liu that he was experiencing frequent urination at night and  
26 during the day. Defendant Liu examined plaintiff, determined that his prostate was enlarged, and  
27 concluded that plaintiff needed surgery. Plaintiff alleges that defendant Liu performed the  
28 surgery and told plaintiff that the surgery had gone well. However, plaintiff alleges that he  
experienced trouble urinating without excruciating pain when he returned to CMF. Plaintiff  
alleges that defendant Liu twice performed a “flexible cystoscopy” on plaintiff to remove a chip

1 and debris left from the surgery, but neither procedure helped plaintiff's symptoms. Plaintiff  
2 alleges that he requested a referral to another urologist, but defendant Bick denied the request.  
3 Plaintiff alleges that he is now unable to control his bladder and wears diapers. Although plaintiff  
4 has seen defendant Liu for follow-up care and defendant Liu has prescribed him a series of  
5 medications, plaintiff alleges that his incontinence has persisted. (Compl. at 1-7.)

## 6 DISCUSSION

7 Many of the allegations in plaintiff's complaint are so vague and conclusory that the court  
8 is unable to determine whether the current action is frivolous or fails to state a claim for relief.  
9 The complaint does not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2).  
10 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to  
11 the defendants and must allege facts that support the elements of the claim plainly and succinctly.  
12 Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege  
13 with at least some degree of particularity overt acts which defendants engaged in that support his  
14 claims. Id. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P.  
15 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an amended  
16 complaint.

17 If plaintiff chooses to file an amended complaint, he must allege facts demonstrating how  
18 the conditions complained of resulted in a deprivation of his federal constitutional or statutory  
19 rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The amended complaint must allege in  
20 specific terms how each named defendant was involved in the deprivation of plaintiff's rights.  
21 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
22 connection between a defendant's actions and the claimed deprivation. Rizzo, 423 U.S. 362; May  
23 v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson, 588 F.2d at 743. Vague and conclusory  
24 allegations of official participation in civil rights violations are not sufficient. Ivey, 673 F.2d at  
25 268.

26 If plaintiff elects to proceed in this action by filing an amended complaint, he is advised  
27 that to maintain an Eighth Amendment claim based on inadequate medical care, he must allege  
28 specific facts showing that defendants acted with deliberate indifference to serious medical needs.

1 See Estelle v. Gamble, 429 U.S. 97 (1976). In the Ninth Circuit, a deliberate indifference claim  
2 has two components:

3 First, the plaintiff must show a “serious medical need” by  
4 demonstrating that “failure to treat a prisoner’s condition could  
5 result in further significant injury or the ‘unnecessary and wanton  
6 infliction of pain.’” Second, the plaintiff must show the  
7 defendant’s response to the need was deliberately indifferent. This  
8 second prong – defendant’s response to the need was deliberately  
9 indifferent – is satisfied by showing (a) a purposeful act or failure  
to respond to a prisoner’s pain or possible medical need and (b)  
harm caused by the indifference. Indifference “may appear when  
prison officials deny, delay or intentionally interfere with medical  
treatment, or it may be shown by the way in which prison  
physicians provide medical care.” (internal citations omitted)

10 Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006).

11 Plaintiff is cautioned that, in applying the deliberate indifference standard, the Ninth  
12 Circuit has held that before it can be said that a prisoner’s civil rights have been abridged, “the  
13 indifference to his medical needs must be substantial. Mere ‘indifference,’ ‘negligence,’ or  
14 ‘medical malpractice’ will not support this cause of action.” Broughton v. Cutter Lab., 622 F.2d  
15 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06). In addition, mere differences of  
16 opinion between a prisoner and prison medical staff as to the proper course of treatment for a  
17 medical condition do not give rise to a § 1983 claim. See Snow v. McDaniel, 681 F.3d 978, 988  
18 (9th Cir. 2012); Toguchi, 391 F.3d at 1058; Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir.  
19 1996); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Franklin v. Oregon, 662 F.2d 1337,  
20 1344 (9th Cir. 1981).

21 Finally, the fact that plaintiff developed unfortunate complications after his surgery does  
22 not, in and of itself, mean that defendant Dr. Liu was deliberately indifferent to his serious  
23 medical needs. See Farmer v. Brennan, 511 U.S. 825, 834 (1994) (deliberate indifference to a  
24 medical need is shown when a prison official knows that an inmate has a serious medical need  
25 and disregards that need by failing to respond reasonably); see also Robinson v. Kitt, No. 1:14-  
26 cv-01525 JLT (PC), 2014 WL 5472578 at \*4 (E.D. Cal. Oct. 28, 2014) (finding that the plaintiff  
27 failed to state a cognizable claim for deliberate indifference based on a double vision  
28 complication that resulted after the defendant doctor performed surgery to remove plaintiff’s

1 nasal polyps); Mayer v. Redix, No. EDCV 12-515 DMG (OP), 2014 WL 4258704 at \*13 (C.D.  
2 Cal. Aug. 26, 2014) (“[T]o the extent Plaintiff alleges Eighth Amendment violations against  
3 Defendant Redix for failing to competently perform the first surgery, Plaintiff shows nothing  
4 more than potential negligence or medical malpractice, which is insufficient to support an Eighth  
5 Amendment claim.”).

6 Plaintiff is informed that the court cannot refer to a prior pleading in order to make  
7 plaintiff’s amended complaint complete. Local Rule 220 requires that an amended complaint be  
8 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
9 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th  
10 Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any  
11 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim  
12 and the involvement of each defendant must be sufficiently alleged.

### 13 **OTHER MATTERS**

14 Also pending before the court is plaintiff’s motion for appointment of counsel. Plaintiff is  
15 advised that district courts lack authority to require counsel to represent indigent prisoners in  
16 section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In  
17 exceptional circumstances, the court may request an attorney to voluntarily represent such a  
18 plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);  
19 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir.1990). When determining whether  
20 “exceptional circumstances” exist, the court must consider plaintiff’s likelihood of success on the  
21 merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity  
22 of the legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court  
23 did not abuse discretion in declining to appoint counsel). The burden of demonstrating  
24 exceptional circumstances is on the plaintiff. Id.

25 Plaintiff asserts that he requires appointment of counsel because he is indigent and has  
26 only a ninth-grade education. While the court sympathizes with these challenges, they are  
27 insufficient to merit the appointment of counsel at this time. Circumstances common to most  
28 prisoners, such as lack of legal education and limited law library access, do not establish

1 exceptional circumstances that warrant a request for voluntary assistance of counsel. Moreover,  
2 until plaintiff files an amended complaint, the court will not be able to determine his likelihood of  
3 success on the merits of this case. Accordingly, the court will deny plaintiff's motion for  
4 appointment of counsel without prejudice.

5 **CONCLUSION**

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff's application to proceed in forma pauperis (Doc. No. 2) is granted.

8 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. The fee  
9 shall be collected and paid in accordance with this court's order to the Director of the California  
10 Department of Corrections and Rehabilitation filed concurrently herewith.

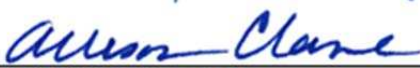
11 3. Plaintiff's complaint is dismissed.

12 4. Plaintiff is granted thirty days from the date of service of this order to file an amended  
13 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
14 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number  
15 assigned to this case and must be labeled "Amended Complaint"; failure to file an amended  
16 complaint in accordance with this order will result in a recommendation that this action be  
17 dismissed without prejudice.

18 5. The Clerk of the Court is directed to send plaintiff the court's form for filing a civil  
19 rights action.

20 6. Plaintiff's motion for appointment of counsel (Doc. No. 3) is denied without prejudice.

21 DATED: November 12, 2015

22   
23 ALLISON CLAIRE  
24 UNITED STATES MAGISTRATE JUDGE  
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