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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

REAGAN THOMAS,  
Plaintiff,  
v.  
RAVERA et. al.,  
Defendants.

No. 2:15-cv-1936 KJM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

I. Statutory Screening of Prisoner Complaints

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or 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).

A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably

1 meritless legal theories or whose factual contentions are clearly baseless.” Jackson v. Arizona,  
2 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute  
3 on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490  
4 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,  
5 has an arguable legal and factual basis. Id.

6 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
7 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
8 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550  
9 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
10 However, in order to survive dismissal for failure to state a claim, a complaint must contain more  
11 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
12 allegations sufficient “to raise a right to relief above the speculative level.” Id. (citations  
13 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that  
14 merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original)  
15 (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d  
16 ed. 2004)).

17 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
18 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell  
19 Atl. Corp., 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
20 content that allows the court to draw the reasonable inference that the defendant is liable for the  
21 misconduct alleged.” Id. (citing Bell Atl. Corp., 550 U.S. at 556). In reviewing a complaint  
22 under this standard, the court must accept as true the allegations of the complaint in question,  
23 Hospital Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), as well as construe the pleading  
24 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, Jenkins v.  
25 McKeithen, 395 U.S. 411, 421 (1969).

## 26 II. First Amended Complaint

27 In the first amended complaint, plaintiff alleges that around 2:40 p.m. on December 26,  
28 2014, defendant Rivera unexpectedly opened his cell door. ECF No. 17 at 4. Plaintiff asserts that

1 at the time Rivera opened the door, plaintiff's hands were on the window frame and clearly  
2 visible to Rivera from the control tower, which directly faces the cell doors. Id. As Rivera  
3 opened the door, plaintiff's left index finger became jammed on a metal strip installed along the  
4 door frame, causing the tip of his finger to be severed. Id. Plaintiff alleges that Rivera knowingly  
5 disregarded a risk to plaintiff's health and safety by opening the door without notice, which  
6 caused injury to his finger in violation of the Eighth Amendment's prohibition against cruel and  
7 unusual punishment. Id. at 5-6.

8 Plaintiff further alleges that the metal strip had previously been installed as a security  
9 measure when the housing unit was used for administrative segregation. Id. at 3. Although the  
10 unit was housing general population inmates at the time of the incident, the metal strips had not  
11 been removed. Id. He claims that the metal strips were a hazard to general population inmates  
12 because, unlike inmates in administrative segregation, they are not handcuffed and therefore  
13 warned every time the door is opened. Id. Plaintiff asserts that defendant Warden Peery failed to  
14 provide any warnings about the risk of injury posed by the metal strips, and this failure to warn  
15 and protect plaintiff from harm violated his Eighth Amendment right to be free from cruel and  
16 unusual punishment. Id. at 5.

### 17 III. Failure to State a Claim

#### 18 a. Defendant Peery

19 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
20 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.  
21 362, 371 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980). "Vague and conclusory  
22 allegations of official participation in civil rights violations are not sufficient." Ivey v. Board of  
23 Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

24 Additionally, "[t]here is no respondeat superior liability under section 1983." Taylor v.  
25 List, 880 F.2d 1040, 1045 (9th Cir. 1989). "A defendant may be held liable as a supervisor under  
26 §1983 only 'if there exists either (1) his or her personal involvement in the constitutional  
27 deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and  
28 the constitutional violation.'" Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting Hansen

1 v. Black, 885 F.2d 642, 646 (9th Cir. 1989). A supervisor may also be held liable, without  
2 personal involvement, if he or she implements “a policy so deficient that the policy itself is a  
3 repudiation of constitutional rights and is the moving force of the constitutional violation.”  
4 Jeffers v. Gomez, 267 F.3d 895, 914 (9th Cir. 2001) (quoting Redman v. County of San Diego,  
5 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc)).

6 Plaintiff asserts that Peery knew that the metal security strips had been installed on the  
7 cells doors and summarily concludes that she knew that they would pose an “unnecessary hazard  
8 and risk to the health and safety of general population inmates.” ECF No. 17 at 5. However,  
9 plaintiff has not provided any evidence demonstrating that Peery was aware of any such risk or  
10 had any reason to believe that warning signs were necessary, and appears to allege that Peery had  
11 knowledge simply because she was the warden. In order to state a claim for relief under the  
12 Eighth Amendment, plaintiff must allege facts that show Peery knew the metal strips posed a risk  
13 of danger to the inmates if the doors were opened without notice and ignored the known risk of  
14 danger. For example, evidence of a known danger could include prior incidents where inmates  
15 were injured or almost injured by the metal strips or previous complaints about the strips. Since  
16 plaintiff has not demonstrated that Peery was deliberately indifferent to a known risk of danger  
17 posed by the metal strips, this claim should be dismissed and plaintiff will be given one final  
18 opportunity to attempt to state a claim against Peery.

19 b. Nurse Lewis

20 In setting forth the facts of his complaint, plaintiff refers to Nurse Lewis as a defendant.  
21 Id. at 4. However, he does not list her as a defendant in the caption or in the list of defendants.  
22 Id. at 1-2. If plaintiff wants to bring claims against Nurse Lewis, he must include Lewis in the list  
23 of defendants. Additionally, the allegations that Lewis improperly inserted the intravenous  
24 needle into plaintiff’s muscle instead of his vein, establish no more than negligence, which is not  
25 sufficient to support a claim for deliberate indifference. Estelle v. Gamble, 429 U.S. 97, 106  
26 (1976) (“Medical malpractice does not become a constitutional violation merely because the  
27 victim is a prisoner.”). Deliberate indifference is established only where the defendant  
28 *subjectively* “knows of and disregards an *excessive risk* to inmate health and safety.” Toguchi v.

1 Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (emphasis added) (citation and internal quotation  
2 marks omitted). Deliberate indifference can be established “by showing (a) a purposeful act or  
3 failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the  
4 indifference.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). There is no indication in the  
5 complaint that Lewis either deliberately inserted the needle improperly or was aware that it had  
6 been improperly inserted. Accordingly, any claims plaintiff may be trying to bring against Nurse  
7 Lewis are dismissed with leave to amend.

8 IV. Claim for Which a Response Will Be Required

9 “The Constitution does not mandate comfortable prisons, but neither does it permit  
10 inhumane ones.” Farmer v. Brennan, 511 U.S. 825, 832 (1994) (internal quotation marks and  
11 citations omitted). “Prison officials have a duty to ensure that prisoners are provided adequate  
12 shelter, food, clothing, sanitation, medical care, and personal safety.” Johnson v. Lewis, 217 F.3d  
13 726, 731 (9th Cir. 2000) (citations omitted). However, “[n]ot every injury that a prisoner sustains  
14 while in prison represents a constitutional violation.” Morgan v. Morgensen, 465 F.3d 1041,  
15 1045 (9th Cir. 2006). Rather, to maintain an Eighth Amendment claim, a prisoner must show that  
16 prison officials were deliberately indifferent to a substantial risk of harm to his health or safety.  
17 Id. “Not every governmental action affecting the interests or well-being of a prisoner is subject to  
18 Eighth Amendment scrutiny.” Whitley v. Albers, 475 U.S. 312, 319 (1986). To establish cruel  
19 and unusual punishment in violation of the Eighth Amendment, a prisoner must demonstrate  
20 “unnecessary and wanton infliction of pain.” Id. (citation and internal quotation marks omitted).  
21 Mere negligent failure to protect an inmate from harm is not actionable under § 1983. Farmer,  
22 511 U.S. at 835.

23 Liberally construed, plaintiff’s assertion that Rivera opened plaintiff’s cell door without  
24 warning, even though he could see that plaintiff’s hands were in the window frame, is sufficient  
25 to state a claim for deliberate indifference. Although the facts do not support that Rivera was  
26 specifically aware of a risk of amputation, they are sufficient to support an inference that Rivera  
27 was aware that plaintiff’s hands were on the door and that he knew that plaintiff’s hands could get  
28 caught in the door if it was opened without warning and cause injury. Accordingly, defendant

1 Rivera will be required to respond to the complaint.

2 V. Leave to Amend

3 For the reasons set forth above, the court finds that the complaint does not state  
4 cognizable claims against defendant Peery and Nurse Lewis. However, it appears that plaintiff  
5 may be able to allege facts to remedy this and he will be given one last opportunity to amend the  
6 complaint if he desires.

7 Plaintiff may proceed forthwith to serve defendant Rivera on his claim that Rivera opened  
8 his cell door unannounced, causing his finger to be partially amputated, or he may delay serving  
9 Rivera and amend the complaint to attempt to state cognizable claims against Peery and Lewis.

10 Plaintiff will be required to complete and return the attached notice advising the court how  
11 he wishes to proceed. If plaintiff chooses to amend the complaint, he will be given thirty days to  
12 file an amended complaint. If he elects to proceed on his claims against Rivera without amending  
13 the complaint, the court will send him the necessary forms for service of the complaint and the  
14 claims against Peery and Lewis will remain dismissed without prejudice.

15 If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions  
16 about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode,  
17 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how each named  
18 defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981).  
19 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
20 connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy,  
21 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official  
22 participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266,  
23 268 (9th Cir. 1982) (citations omitted).

24 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make  
25 his amended complaint complete. Local Rule 220 requires that an amended complaint be  
26 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
27 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
28 1967), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 929 (9th Cir. 2012) (claims

1 dismissed with prejudice and without leave to amend do not have to be re-pled in subsequent  
2 amended complaint to preserve appeal). Once plaintiff files an amended complaint, any previous  
3 complaints no longer serve any function in the case. Therefore, in an amended complaint, as in  
4 an original complaint, each claim and the involvement of each defendant must be sufficiently  
5 alleged.

6 VI. Summary

7 The claim that defendant Rivera opened your cell door without warning and caused your  
8 hand to be injured states a claim, and Rivera will have to respond to the complaint. However, the  
9 claim that defendant Peery failed to provide warning about the dangers caused by the metal strip  
10 on the door does not state a claim because there are not enough facts to show that Peery was  
11 aware of the danger. Just knowing that the strips were there is not enough. She had to have  
12 known they were dangerous. Additionally, although you refer to Nurse Lewis as a defendant,  
13 Lewis is not on the list of defendants and the claims only show negligence. If you want to make a  
14 deliberate indifference claim against Lewis, you must state facts that show that she knew of your  
15 serious medical need and ignored the risk to your health or safety.

16 You may either (1) proceed immediately on you claim against Rivera, or (2) try to amend  
17 the complaint to state claims against Peery and Lewis. If you want to go forward without  
18 amending the complaint, your claims against Peery and Lewis will remain dismissed without  
19 prejudice. If you choose to amend the complaint, the amended complaint must include all of the  
20 claims you wants to make, including the ones that have already been found to state a claim,  
21 because the court will not look at the claims or information in the original and first amended  
22 complaint. In other words, any claims not in the second amended complaint will not be  
23 considered. You must complete the attached notification showing what you want to do and return  
24 it to the court. Once the court receives the notice, it will issue an order telling you what you  
25 needs to do next (i.e. file an amended complaint or complete and return service paperwork).


26 Accordingly, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff's claims against Peery and Lewis are dismissed with leave to amend.
- 28 2. Plaintiff has the option to proceed immediately on his Eighth Amendment claim

1 against Rivera as set forth in Section IV above, or to amend the complaint.

2 3. Within fourteen days of service of this order, plaintiff shall complete and return the  
3 attached form notifying the court whether he wants to proceed on the screened complaint or  
4 whether he wants to file a second amended complaint.

5 DATED: June 1, 2017

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ALLISON CLAIRE  
8 UNITED STATES MAGISTRATE JUDGE  
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UNITED STATES DISTRICT COURT  
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REAGAN THOMAS,  
Plaintiff,  
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Defendants.

No. 2:15-cv-1936 KJM AC P

PLAINTIFF'S NOTICE ON HOW TO  
PROCEED

Check one:

Plaintiff wants to proceed immediately on his Eighth Amendment claim against defendant Rivera without amending the complaint. Plaintiff understands that going forward without amending the complaint means that his claims against defendant Peery and Nurse Lewis will remain dismissed without prejudice.

Plaintiff wants to amend the complaint.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Thomas Reagan  
Plaintiff pro se