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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SKYLER TRUJILLO,  
Plaintiff,  
v.  
NOFSINGER,  
Defendants.

No. 2:16-cv-1456 DB P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the jurisdiction of the undersigned magistrate judge for all purposes pursuant to 28 U.S.C. § 1915. (ECF No. 4.)

Plaintiff alleges defendants violated his rights under the Eighth Amendment by assaulting him, failing to provide him proper medical treatment for his injuries, and denying him due process. Presently before the court is plaintiff’s motion to proceed in forma pauperis (“IFP”) (ECF No. 2) and plaintiff’s complaint for screening (ECF No. 1). For the reasons set forth below, the court will give plaintiff the option to proceed with the complaint as screened or to amend the complaint.

**IN FORMA PAUPERIS**

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.

1 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§  
2 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in  
3 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct  
4 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
5 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments  
6 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
7 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
8 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
9 1915(b)(2).

## 10 SCREENING

### 11 I. Legal Standards

12 The court is required to screen complaints brought by prisoners seeking relief against a  
13 governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. §  
14 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims  
15 that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
16 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
17 U.S.C. § 1915A(b)(1) & (2).

18 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
19 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
20 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
21 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
22 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
23 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227.  
24 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
25 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
26 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
27 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

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1           However, in order to survive dismissal for failure to state a claim a complaint must  
2 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain  
3 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,  
4 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the  
5 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
6 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
7 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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

9                   Every person who, under color of [state law] . . . subjects, or causes  
10                   to be subjected, any citizen of the United States . . . to the deprivation  
11                   of 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.

12 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
13 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
14 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
15 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the  
16 meaning of § 1983, if he does an affirmative act, participates in another’s affirmative acts or  
17 omits to perform an act which he is legally required to do that causes the deprivation of which  
18 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

26           **II. Does Plaintiff State Claims Cognizable under 42 U.S.C. § 1983**

27           To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a  
28 right secured by the Constitution or laws of the United States was violated and (2) that the alleged

1 violation was committed by a person acting under the color of state law. See West v. Atkins, 487  
2 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

### 3 **A. Allegations of the Complaint**

4 Plaintiff claims the events giving rise to the claim occurred while he was incarcerated in  
5 the Sacramento County Jail. (ECF No. 1 at 1.) Plaintiff has named one specific individual –  
6 Sheriff Nofsinger – and ten John Does as defendants in this action. (Id. at 1-2.)

7 Plaintiff alleges Sheriff Nofsinger hit him in the face repeatedly while he was restrained,  
8 injuring his jaw. (Id. at 4.) Plaintiff states he was not given proper medical treatment for at least  
9 three weeks after the incident. (Id. at 5.) As a result, his jaw set in an unordinary fashion and he  
10 has difficulty chewing or yawning without pain. (Id.) Plaintiff further alleges that he was later  
11 placed in “total separation” without a hearing and was unable to notify his family he was being  
12 transferred back to state prison in retaliation for the incident. (Id. at 6.)

13 Plaintiff requests damages for his physical and emotional injuries resulting from the  
14 alleged assault, the denial of due process during the disciplinary proceedings, and the denial of  
15 adequate medical care. (Id. at 7.)

16 Plaintiff’s claims: (1) that defendant Nofsinger violated his rights under the Eighth  
17 Amendment when he punched plaintiff in the head repeatedly while plaintiff was restrained, (2)  
18 that he was not provided proper medical treatment in violation of the Eighth Amendment after the  
19 incident, (3) and that he was denied due process and was subject to retaliation following the  
20 incident. The court will address each claim in turn.

### 21 **B. Analysis**

#### 22 **1. Eighth Amendment Excessive Force Claim**

23 Plaintiff alleges that defendant Nofsinger hit him in the head repeatedly while plaintiff  
24 was restrained. Thus, plaintiff has stated a cognizable claim for excessive force in violation of his  
25 Eighth Amendment rights against defendant Nofsinger. See Hudson v. McMillian, 503 U.S. 1, 6  
26 (1992) (to establish a claim for excessive force, prisoner must show officer applied force  
27 maliciously and sadistically to cause harm rather than in a good-faith effort to restore order);  
28 Clement v. Gomez, 298 F.3d 898, 903 (9th Cir. 2002).

## 2. Eighth Amendment Medical Claim

Plaintiff claims that following the alleged assault he did not receive proper medical treatment and that as a result he suffers from jaw pain. Plaintiff does not specify any defendants who were responsible for his medical treatment.

When a prisoner's Eighth Amendment claim arises in the context of medical care, the prisoner must allege and prove “acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” Estelle v. Gamble, 429 U.S. 97, 106 (1976). An Eighth Amendment medical claim has two elements: “the seriousness of the prisoner's medical need and the nature of the defendant's response to that need.” McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

A medical need is serious “if the failure to treat the prisoner's condition could result in further significant injury or the ‘unnecessary and wanton infliction of pain.’” McGuckin, 974 F.2d at 1059 (quoting Estelle, 429 U.S. at 104). Indications of a serious medical need include “the presence of a medical condition that significantly affects an individual's daily activities.” Id. at 1059-60. By establishing the existence of a serious medical need, a prisoner satisfies the objective requirement for proving an Eighth Amendment violation. Farmer v. Brennan, 511 U.S. 825, 834 (1994).

If a prisoner establishes the existence of a serious medical need, he must then show that prison officials responded to the serious medical need with deliberate indifference. See Id. In general, deliberate indifference may be shown when prison officials deny, delay, or intentionally interfere with medical treatment, or may be shown by the way in which prison officials provide medical care. Hutchinson v. United States, 838 F.2d 390, 393-94 (9th Cir. 1988).

Before it can be said that a prisoner's civil rights have been abridged with regard to medical care, “the indifference to his medical needs must be substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06); see also Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (“Mere negligence in

1 diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth  
2 Amendment rights.”); McGuckin, 974 F.2d at 1059 (same). Deliberate indifference is “a state of  
3 mind more blameworthy than negligence” and “requires ‘more than ordinary lack of due care for  
4 the prisoner's interests or safety.’” Farmer, 511 U.S. at 835.

5 Delays in providing medical care may manifest deliberate indifference. Estelle, 429 U.S.  
6 at 104-05. To establish a claim of deliberate indifference arising from delay in providing care, a  
7 plaintiff must show that the delay was harmful. See Berry v. Bunnell, 39 F.3d 1056, 1057 (9th  
8 Cir. 1994); McGuckin, 974 F.2d at 1060; Wood v. Housewright, 900 F.2d 1332, 1335 (9th Cir.  
9 1990); Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir. 1989); Shapley v. Nevada Bd. of State  
10 Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985). In this regard, “[a] prisoner need not show  
11 his harm was substantial; however, such would provide additional support for the inmate's claim  
12 that the defendant was deliberately indifferent to his needs.” Jett v. Penner, 439 F.3d 1091, 1096  
13 (9th Cir. 2006) (citing McGuckin, 974 F.2d at 1060).

14 Finally, mere differences of opinion between a prisoner and prison medical staff or  
15 between medical professionals as to the proper course of treatment for a medical condition do not  
16 give rise to a § 1983 claim. See Toguchi, 391 F.3d at 1058; Jackson v. McIntosh, 90 F.3d 330,  
17 332 (9th Cir. 1996); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989); Franklin v. Oregon, 662  
18 F.2d 1337, 1344 (9th Cir. 1981).

19 While plaintiff has alleged that he was not given timely medical treatment following the  
20 alleged assault, he does not specify any defendant who was responsible for his medical treatment  
21 following the incident. The lack of detail in the allegations of the original complaint means that,  
22 for purposes of 28 U.S.C. § 1915A, plaintiff has not sufficiently alleged a claim under the Civil  
23 Rights Act. However, successfully identifying the John Does allegedly responsible for providing  
24 the inadequate care would, with the factual allegations already made here, suffice for plaintiff to  
25 go forward with such a claim under § 1915A.

### 26 **3. Due Process Claim**

27 Plaintiff appears to allege that his due process rights were violated because he was placed  
28 in isolation without any disciplinary action brought against him. (ECF No. 1 at 7.)

1 Prisoners retain their right to due process subject to the restrictions imposed by the nature  
2 of the penal system. See Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Prison disciplinary  
3 proceedings are not part of a criminal prosecution and the full panoply of rights due a defendant  
4 in such proceedings does not apply. See Id. But the Due Process Clause requires certain  
5 minimum procedural protections where serious rules violations are alleged, the power of prison  
6 officials to impose sanctions is narrowly restricted by state statute or regulations, and the  
7 sanctions are severe. See Id. at 556-57, 571-72 n. 19.

8 Prisoners are entitled to the following procedures at disciplinary hearings where they may  
9 lose good-time credits or be placed in solitary confinement: (1) advanced written notice of the  
10 claimed violation at least twenty-four hours before the hearing, (2) a written statement of fact  
11 findings as to the evidence relied upon and reasons for the actions taken, and (3) a right to call  
12 witnesses and present documentary evidence where such would not be unduly hazardous to  
13 institutional safety or correctional goals. Id. at 563-66; see also Hines v. Gomez, 108 F.3d 265,  
14 268 (9th Cir. 1997); McFarland v. Cassady, 779 F.2d 1426, 1428 (9th Cir. 1986).

15 Additionally, “some evidence” must support the decision of the hearing officer.  
16 Superintendent v. Hill, 472 U.S. 445, 455 (1985). The standard is not particularly stringent and  
17 the relevant inquiry is whether “there is any evidence in the record that could support the  
18 conclusion reached.” Id. at 455-56.

19 Here, to the extent plaintiff alleges he was placed in isolation without receiving a  
20 disciplinary hearing, such allegations could state a cognizable due process claim. However,  
21 plaintiff has failed to specify any defendants that participated in the violation of his rights.  
22 Accordingly, his due process claim will be dismissed with leave to amend.

#### 23 **4. Retaliation in Violation of the First Amendment Claim**

24 Plaintiff alleges that defendants retaliated against him, but provides no factual allegations  
25 to support his claim.

26 “Within the prison context, a viable claim of First Amendment retaliation entails five  
27 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)  
28 because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s

1 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate  
2 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

3 Plaintiff has not stated any facts showing he engaged in conduct protected by the First  
4 Amendment, such as filing a grievance or pursuing a civil rights action. Valandingham v.  
5 Bojorquez, 866 F.2d 1135, 1138 (9th Cir. 1989); Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir.  
6 1985). Further, plaintiff has not specified who retaliated against him or what protected conduct  
7 he engaged in that prompted the alleged retaliation against him. Plaintiff must allege such details  
8 in order to proceed with this claim under the Civil Rights Act and 28 U.S.C. § 1915A.

9 Accordingly, he has failed to state a claim for retaliation in violation of the First Amendment.  
10 However, plaintiff will be provided an opportunity to clarify and amend his First Amendment  
11 claim.

## 12 **5. Doe Defendants**

13 In plaintiff’s second and third claims he fails to identify any specific defendants who  
14 participated in the alleged rights violations. However, he lists ten Doe defendants in this action.

15 Under § 1983, plaintiff must demonstrate that each defendant personally participated in  
16 the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires  
17 the presentation of factual allegations sufficient to state a plausible claim for relief. Ashcroft v.  
18 Iqbal, 556 U.S. 662, 678 (2009); Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).  
19 The statute clearly requires that there be an actual connection or link between the actions of the  
20 defendants and the deprivation alleged to have been suffered by the plaintiff. See Monell, 436  
21 U.S. 692. Plaintiff has failed to state facts showing how the Doe defendants violated his rights.  
22 In order to state a cognizable claim, plaintiff must set forth specific factual allegations  
23 demonstrating how each defendant violated his rights. See Leer v. Murphy, 844 F.2d 628, 634  
24 (9th Cir. 1988).

25 The use of John Does in pleading practice is generally disfavored – but it is not prohibited.  
26 See Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980); Wakefield v. Thompson, 177 F.3d  
27 1160, 1163 (9th Cir. 1999); Lopes v. Viera, 543 F. Supp.2d 1149, 1152 (E.D. Cal. 2008).  
28 Eventually plaintiff may be afforded an opportunity for limited, preliminary discovery to identify



1 the names of the John Does “unless it is clear that discovery would not uncover their identities,”  
2 Gillespie, 629 F.2d at 642, and only after the court is satisfied he has exhausted every other  
3 possibility of finding their names. Since by this order plaintiff will be granted the option to file  
4 an amended complaint, he must use the time given to amend to do everything he can to supply the  
5 names of the Doe defendants without further assistance from the court. He may seek extensions  
6 of time for the filing of an amended complaint for that purpose if necessary.

7 Further, “John Doe” defendant liability must also be properly alleged. A plaintiff may use  
8 “Doe” designations to refer to defendants whose names are unknown; however, he must number  
9 them in the complaint, e.g., “John Doe 1,” “John Doe 2,” so that each numbered John Doe refers  
10 to a specific person. If plaintiff chooses to file an amended complaint he shall either name the  
11 defendants involved or list the Doe defendants involved and describe what each did to violate his  
12 rights. If plaintiff can only list these defendants as John Doe, plaintiff should allege specific acts  
13 that each Doe defendant did, such as “John Doe 1 did X” and John Doe 2 did Y.” Alexander v.  
14 Tilton, No. 1:07-cv-0759 LJO DLB, 2009 WL 464486, \*5 (E.D. Cal. Feb. 24, 2009).

### 15 **FILING AN AMENDED COMPLAINT**

16 As set out above, plaintiff fails to state cognizable claims for violations of his right to  
17 adequate medical care, due process, and to be free from retaliation against various Doe  
18 defendants. However, plaintiff will be given an opportunity to amend the complaint.

19 Plaintiff is advised that in an amended complaint he must clearly identify each defendant  
20 and the action that defendant took that violated his constitutional rights. The court is not required  
21 to review exhibits to determine what plaintiff’s charging allegations are as to each named  
22 defendant. If plaintiff wishes to add a claim, he must include it in the body of the complaint. The  
23 charging allegations must be set forth in the amended complaint so defendants have fair notice of  
24 the claims plaintiff is presenting. That said, plaintiff need not provide every detailed fact in  
25 support of his claims. Rather, plaintiff should provide a short, plain statement of each claim. See  
26 Fed. R. Civ. P. 8(a).

27 Any amended complaint must show the federal court has jurisdiction, the action is brought  
28 in the right place, and plaintiff is entitled to relief if plaintiff’s allegations are true. It must

1 contain a request for particular relief. Plaintiff must identify as a defendant only persons who  
2 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.  
3 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation  
4 of a constitutional right if he does an act, participates in another's act or omits to perform an act  
5 he is legally required to do that causes the alleged deprivation).

6 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.  
7 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed.  
8 R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
9 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

10 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
11 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any  
12 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.  
13 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be  
14 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema  
15 N.A., 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting point of a simplified pleading system,  
16 which was adopted to focus litigation on the merits of a claim."); Fed. R. Civ. P. 8.

17 An amended complaint must be complete in itself without reference to any prior pleading.  
18 E.D. Cal. R. 220. Once plaintiff files an amended complaint, all prior pleadings are superseded.

19 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and  
20 has evidentiary support for his allegations, and for violation of this rule the court may impose  
21 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

## 22 CONCLUSION

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted;

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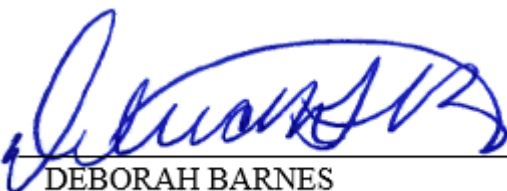
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2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the Director of the California Department of Corrections and Rehabilitation filed concurrently herewith.
3. Plaintiff's Eighth Amendment medical claim is dismissed with leave to amend for failure to identify the individual(s) involved.
4. Plaintiff's claim that he was denied due process and was subject to retaliation is dismissed with leave to amend for failure to allege sufficient facts to state a claim and failure to identify the individuals involved in the alleged deprivations.
5. Plaintiff has the option to proceed immediately with only his Eighth Amendment excessive force claim against defendant Nofsinger as set forth in Section II above, or to amend the complaint.
6. Within fourteen days of service of this order, plaintiff shall complete and return the attached form notifying the court whether he wants to proceed on the screened complaint or whether he wants to file a first amended complaint.
7. Failure to comply with this order will result in a recommendation that this action be dismissed.

Dated: September 25, 2018

  
DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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