



1 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
2 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
3 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
4 1915(b)(2).

## 5 SCREENING

### 6 I. Legal Standards

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

13 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
14 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
15 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
16 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
17 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
18 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227.

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

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1 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
2 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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

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

10 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
11 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
12 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A  
13 person 'subjects' another to the deprivation of a constitutional right, within the meaning of §  
14 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform  
15 an act which he is legally required to do that causes the deprivation of which complaint is made."  
16 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

## 24 **II. Allegations in the Complaint**

25 The allegations giving rise to plaintiff's claims occurred while plaintiff was housed at the  
26 Solano County Jail. (ECF No. 1 at 1.) Plaintiff names as defendants: (1) under sheriff Thomas  
27 Ferrara; (2) dentist Dr. Lew; (3) physician Dr. Jim; and (4) medical assistant Choera.

28 Plaintiff claims that in late July 2017 he began experiencing pain in two of his teeth. (Id.  
at 3.) He submitted medical requests and was examined by Dr. Jim on August 2, 2017. Dr. Jim  
observed that plaintiff had an abscessed and infected tooth. Dr. Jim prescribed pain medication

1 and put plaintiff on the waiting list to be seen by a dentist. Plaintiff was seen by the dentist, Dr.  
2 Lew, on August 19, 2017. He claims one tooth needed to be extracted and one tooth required a  
3 filling. He claims Dr. Lew stated, “we only extract teeth here.” He alleged that thereafter, he was  
4 not treated for his dental needs for over thirty days. Plaintiff stated he believes that because of the  
5 delay the tooth that previously needed a filling must now be extracted.

6 Plaintiff also states that under sheriff Thomas Ferrara was aware of the backlog of dental  
7 requests and has not taken action to alleviate the problem. (Id. at 4.) Plaintiff claims Medical  
8 Assistant Choera is liable because she was aware of his need for dental treatment because she  
9 responded to his grievance.

### 10 **III. Does Plaintiff State a Claim under 42 U.S.C. § 1983?**

#### 11 **A. Legal Standards under the Eighth Amendment**

12 The Eighth Amendment prohibits state actors from acting with deliberate indifference to  
13 an inmate’s health or safety. See Farmer v. Brennan, 511 U.S. 825 (1994). A “system of ready  
14 access to adequate dental care” is required by the Eighth Amendment, and deliberate indifference  
15 to dental needs is proscribed. Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir. 1989). “In order  
16 to state a cognizable [Eighth Amendment denial of medical care] claim, a prisoner must allege  
17 acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical  
18 needs.” Estelle v. Gamble, 429 U.S. 97, 106 (1976). “A ‘serious’ medical need exists if the  
19 failure to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary  
20 and wanton infliction of pain.’” McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1991),  
21 overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en  
22 banc) (quoting Estelle, 429 U.S. at 104). “The existence of an injury that a reasonable doctor or  
23 patient would find important and worthy of comment or treatment; the presence of a medical  
24 condition that significantly affects an individual’s daily activities; or the existence of chronic and  
25 substantial pain are examples of indications that a prisoner has a ‘serious’ need for medical  
26 treatment.” Id. (citing Wood v. Housewright, 900 F.2d 1332, 1337-41 (9th Cir. 1990); Hunt v.  
27 Dental Dep’t, 865 F.2d 198, 200-01 (9th Cir. 1989)).

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1 Deliberate indifference may be found when prison officials deny, delay, or intentionally  
2 interfere with medical treatment, or through the manner in which treatment is provided. See  
3 Estelle, 429 U.S. at 104-05. However, “mere delay . . . , without more, is insufficient to state a  
4 claim of deliberate medical indifference,” the delay must also be harmful. Shapley v. Nevada Bd.  
5 of State Prison Com’rs, 766 F.2d 404, 407 (9th Cir. 1985).

## 6 **B. Analysis**

### 7 **1. Dr. Lew**

8 Taking the allegations in the complaint as true, plaintiff has stated a potentially cognizable  
9 claim for deliberate indifference in violation of his Eighth Amendment rights. Plaintiff has  
10 claimed Dr. Lew was aware plaintiff required treatment, plaintiff’s treatment was delayed, and  
11 that caused plaintiff to remain in pain. McGuckin, 974 F.2d at 1060.

### 12 **2. Dr. Jim**

13 The facts stated in the complaint indicate Dr. Jim referred plaintiff for dental care and  
14 prescribed medication to help treat plaintiff’s pain. Accordingly, plaintiff has failed to allege  
15 sufficient facts showing that Dr. Jim acted with deliberate indifference to his dental needs. See  
16 Jett v. Penner, 439 F.3d 1091, 1096 (Deliberate indifference is shown by “a purposeful act or  
17 failure to respond to a prisoner’s pain or possible medical need.”) (citing McGuckin, 974 F.2d at  
18 1060).

### 19 **3. Under Sheriff Ferrara**

20 “A plaintiff must allege facts, not simply conclusions, that show that an individual was  
21 personally involved in the deprivation of his civil rights.” Barren v. Harrington, 152 F.3d 1193,  
22 1194 (9th Cir. 1998). For an individual to be liable in his official capacity, a plaintiff must allege  
23 that the official acted as a result of a policy, practice, or custom. See Cortez v. County of Los  
24 Angeles, 294 F.3d 1186, 1188 (9th Cir. 2001). Further, there is no respondeat superior liability  
25 under § 1983, so a defendant’s position as the supervisor of someone who allegedly violated a  
26 plaintiff’s constitutional rights does not make him liable. Monell v. Dep’t of Soc. Servs., 436  
27 U.S. 658, 691 (1978); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff’s conclusory

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1 allegation that Ferrara was aware of delays in inmates receiving dental treatment is not sufficient  
2 to show that he violated plaintiff's rights.

#### 3 **4. Medical Assistant Choera**

4 Defendant Choera's actions in responding to plaintiff's grievance, alone, cannot give rise  
5 to any claims for relief under § 1983. Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993).  
6 Prisoners have no stand-alone due process rights related to the administrative grievance process.  
7 See Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988); see also Ramirez v. Galaza, 334 F.3d  
8 850, 860 (9th Cir. 2003) (holding that there is no liberty interest entitling inmates to a specific  
9 grievance process). Prison officials are not required under federal law to process inmate  
10 grievances in a specific way or to respond to them in a favorable manner. Because there is no  
11 right to any particular grievance process, plaintiff cannot state a cognizable claim based on his  
12 allegations that defendant Choera did not provide plaintiff with any relief through the grievance  
13 process.

#### 14 **FILING AN AMENDED COMPLAINT**

15 As set out above, plaintiff fails to state cognizable claims against defendants Dr. Jim,  
16 Sheriff Ferrara, and medical assistant Choera. However, plaintiff will be given an opportunity to  
17 amend the complaint as to those defendants.

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

26 Any amended complaint must show the federal court has jurisdiction, the action is brought  
27 in the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must  
28 contain a request for particular relief. Plaintiff must identify as a defendant only persons who

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

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

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

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

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


21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 7) is granted;
- 23 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
24 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §  
25 1915(b)(1). All fees shall be collected and paid in accordance with this court's order  
26 to the Director of the California Department of Corrections and Rehabilitation filed  
27 concurrently herewith.
- 28 3. Plaintiff has stated a potentially cognizable Eighth Amendment claim against Dr. Lew.

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- 4. Plaintiff's claims against Dr. Jim, Sheriff Ferrara, and Choera are dismissed with leave to amend for failure to state a claim.
- 5. Plaintiff has the option to proceed immediately on his Eighth Amendment claim against defendant Dr. Lew 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: November 13, 2018

  
DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DLB:12  
DLB:1/Orders/Prisoner.Civil.Rights/bass1938.scm



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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC BASS,  
  
Plaintiff,  
  
v.  
THOMAS FERRARA, et al.,  
  
Defendants.

No. 2:17-cv-1938 DB P

PLAINTIFF’S NOTICE ON HOW TO  
PROCEED

Check one:

\_\_\_\_\_ Plaintiff wants to proceed immediately on his Eighth Amendment claim against defendant Dr. Lew without amending the complaint. Plaintiff understands that by going forward without amending the complaint he is voluntarily dismissing his claims against defendants Dr. Jim, Sheriff Ferrara, and Choera without prejudice.

\_\_\_\_\_ Plaintiff wants to amend the complaint.

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

\_\_\_\_\_  
Eric Bass  
Plaintiff pro se