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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

SAMUEL WINDHAM, JR.,

Plaintiff,

v.

C. WOFFORD, et al.,

Defendants.

No. 2:18-CV-2656-WBS-DMC-P

**ORDER**

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's first amended complaint (ECF No. 20). Plaintiff alleges each Defendant violated his Eighth Amendment right to medical treatment all relating to medical treatment of skin grafts. Plaintiff's entire complaint is, once again, difficult to read due to illegible handwriting. Many of the claims are ambiguous and difficult to decipher.

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## I. SCREENING REQUIREMENT AND STANDARD

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2).

The Federal Rules of Civil Procedure require complaints contain a “...short and plain statement of the claim showing that the pleader is entitled to relief.” See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (quoting Fed. R. Civ. P. 8(a)(1)). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and are afforded the benefit of any doubt. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572F.3d at 969.

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## II. PLAINTIFF'S ALLEGATIONS

Plaintiff has named twelve Defendants: (1) C. Wofford, (2) C. Shelling, (3) J. Medina, (4) Joseph Bick, (5) Lori W. Austin, (6) Michele Ditomas, (7) David Mathis, (8) Usha Pai, (9) Mohamednoor Osman, (10) Falza Rading, (11) Rick Champion, and (12) Cheryl Innis-Burton. Plaintiff asserts twelve claims, one per defendant. In general, Plaintiff claims that each defendant violated his Eighth Amendment rights by engaging in various activities that caused him harm due to improper treatment of his skin graft. However, Plaintiff's claims are difficult to decipher and the claims are largely unclear.

## III. ANALYSIS OF COMPLAINT

Plaintiff's first claim against C. Wofford, third claim against J. Medina, eighth claim against Usha Pai, eleventh claim against Rick Champion, and twelfth claim against Cheryl Innis-Burton are the only claims currently capable of passing screening. The remaining seven claims fail to meet the requirements of Rule 8 and the substantive requirements of the Eighth Amendment.

The Federal Rules of Civil Procedure require complaints contain a "...short and plain statement of the claim showing that the pleader is entitled to relief." See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (quoting Fed. R. Civ. P. 8(a)(1)). Claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because a plaintiff must allege, with at least some degree of particularity, overt acts by specific defendants which support the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, to survive screening, Plaintiff's claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

1 Plaintiff states his Fourteenth Amendment due process right was violated.  
2 However, the complaint does not indicate how his due process right was violated. Rather, the  
3 complaint seems to raise issues of safety under the Eighth Amendment and retaliation under the  
4 First Amendment. For that reason, Plaintiff has failed to provide a short and plain statement of a  
5 claim demonstrating that he is entitled to relief. Plaintiff will be afforded an opportunity to  
6 amend his complaint. Plaintiff is reminded however, that he will not be given unlimited  
7 opportunity to amend his complaint. As this is his second opportunity to amend, Plaintiff is  
8 cautioned that failure to compose a complaint that complies with Rule 8 and states a cognizable  
9 claim could lead to dismissal.

10 Claims 2, 4, 5, 6, 7, 9, and 10, all fail to contain a short plain statement of a claim  
11 showing that Plaintiff is entitled to relief. The claims are difficult to read, conclusory, and fail to  
12 allege facts demonstrating a constitutional violation occurred. Plaintiff will be provided an  
13 opportunity to amend. However, Plaintiff is reminded that any amended complaint should be  
14 legible and clear, containing a short and plain statement of a claim showing Plaintiff is entitled to  
15 relief. Because some of the claims seem to indicate Plaintiff seeks to hold Defendants liable in  
16 their supervisor capacities, and because of Plaintiff's pro se status, the Court has provided  
17 relevant law related to supervisory liability below. Plaintiff is also directed to this Court's May  
18 15, 2019, order for guidance related to relevant Eighth Amendment law.

19 Supervisory personnel are generally not liable under § 1983 for the actions of their  
20 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no  
21 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional  
22 violations of subordinates if the supervisor participated in or directed the violations. See id. The  
23 Supreme Court has rejected the notion that a supervisory defendant can be liable based on  
24 knowledge and acquiescence in a subordinate's unconstitutional conduct because government  
25 officials, regardless of their title, can only be held liable under § 1983 for his or her own conduct  
26 and not the conduct of others. See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). Supervisory  
27 personnel who implement a policy so deficient that the policy itself is a repudiation of  
28 constitutional rights and the moving force behind a constitutional violation may, however, be

1 liable even where such personnel do not overtly participate in the offensive act. See Redman v.  
2 Cnty of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc).

3 When a defendant holds a supervisory position, the causal link between such  
4 defendant and the claimed constitutional violation must be specifically alleged. See Fayle v.  
5 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.  
6 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel in  
7 civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th  
8 Cir. 1982). “[A] plaintiff must plead that each Government-official defendant, through the  
9 official’s own individual actions, has violated the constitution.” Iqbal, 662 U.S. at 676.

#### 10 11 **IV. AMENDING THE COMPLAINT**

12 Because it may be possible that some of the deficiencies identified in this order  
13 may be cured by amending the complaint, plaintiff is entitled to leave to amend prior to dismissal  
14 of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).  
15 Plaintiff is informed that, as a general rule, an amended complaint supersedes the original  
16 complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following  
17 dismissal with leave to amend, all claims alleged in the original complaint which are not alleged  
18 in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).  
19 Therefore, if plaintiff amends the complaint, the court cannot refer to the prior pleading in order  
20 to make plaintiff’s amended complaint complete. See Local Rule 220. An amended complaint  
21 must be complete in itself without reference to any prior pleading. See id. This means, in  
22 practical terms, if Plaintiff files an amended complaint he must not only cure the deficiencies  
23 identified in this order, but also reallege the cognizable claim(s) discussed in this Court’s order.

24 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
25 conditions complained of have resulted in a deprivation of plaintiff’s constitutional rights. See  
26 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
27 each named defendant is involved, and must set forth some affirmative link or connection  
28 between each defendant’s actions and the claimed deprivation. See May v. Enomoto, 633 F.2d

1 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

2 Because the complaint appears to otherwise state cognizable claims, if no amended  
3 complaint is filed within the time allowed therefor, the Court will issue findings and  
4 recommendations that the claims identified herein as defective be dismissed, as well as such  
5 further orders as are necessary for service of process as to the cognizable claims.

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7 **VI. CONCLUSION**

8 Accordingly, IT IS HEREBY ORDERED that Plaintiff may file a second amended  
9 complaint within 30 days of the date of service of this order.

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12 Dated: October 3, 2019



13 DENNIS M. COTA  
14 UNITED STATES MAGISTRATE JUDGE  
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