

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
9 which relief may be granted if it appears beyond doubt that a plaintiff can prove no set of facts in
10 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
11 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
12 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
13 this standard, the court must accept as true the allegations of the complaint in question, Hosp.
14 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
15 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
16 McKeithen, 395 U.S. 411, 421 (1969).

17 II. FIRST AMENDED COMPLAINT

18 Plaintiff is an inmate housed at California State Prison – Solano (“CSP-Solano”). He
19 names as defendants CSP-Solano Chief Medical Officer Curtis Allen, Registered Nurses Erika
20 Ramirez and Melani de la Vega, and Nurse Practitioner Debrina Sanchez. ECF No. 14 at 1-2.

21 Plaintiff alleges¹ that on September 28, 2019, he went “man down” due to blood coming
22 from his inflamed, apparently infected² right foot. ECF No. 14 at 3, 13. At the medical clinic,
23 staff told plaintiff that because his blood pressure was high, he would not be able to leave until it
24 went down. Id. In response, plaintiff asked for a refusal slip in order to explain that his blood
25 pressure was high because he had missed his 12:00 blood pressure pill, and that he simply wanted
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27 ¹ The court has referred to plaintiff's attachments in construing the allegations of the FAC. See
ECF No. 14 at 13-16, 27.

28 ² Plaintiff states that his foot was bleeding and “had yellowish discharge.” ECF No. 14 at 3.

1 to get his medication after his injured foot was cleaned. See id. at 3, 13, 15.

2 When plaintiff received the refusal slip, the information on it was incorrect. He wrote on
3 the form, explaining the actual reason why he wanted to leave the clinic, which was the truth.
4 ECF No. 14 at 3, 13, 15. Because of his response, defendant de la Vega became very upset and
5 she and defendant Ramirez refused to clean plaintiff's bleeding foot. Instead, de la Vega
6 contacted a correctional officer and instructed her to take the refusal slip from plaintiff and kick
7 him out of the medical clinic. Id. at 3. Defendant Sanchez, who was also present as the incident
8 unfolded, agreed that plaintiff should be sent back.

9 Defendants did not give plaintiff a wheelchair to use in returning from the clinic, even
10 though his injury and underlying cellulitis warranted it. ECF No. 14 at 3. Plaintiff was forced to
11 hop and walk back in pain on his bleeding foot. Id. at 3, 15. The following Monday, a doctor
12 ordered that plaintiff "lay in" until October 4, 2019. Id. at 15.

13 Plaintiff contends that the actions and inactions of defendants de la Vega, Ramirez, and
14 Sanchez constituted deliberate indifference to his serious medical needs in violation of his Eighth
15 Amendment rights. See generally ECF No. 14 at 3. Although plaintiff also names Chief Medical
16 Officer Curtis Allen as a defendant in the FAC (id. at 1), he makes no specific allegations about
17 him in it. See generally id. at 1-6.

18 III. DISCUSSION

19 A. Claims for Which a Response Will Be Required

20 Plaintiff has stated a cognizable Eighth Amendment deliberate indifference claim against
21 defendants Ramirez, de la Vega, and Sanchez. "[T]he government has an obligation to provide
22 medical care for those whom it punishes by incarceration." Hutchinson v. United States, 838
23 F.2d 390, 394 (9th Cir. 1988) (brackets added) (citing Estelle v. Gamble, 429 U.S. 97 (1976)). To
24 state a viable claim of deliberate indifference to serious medical need, a plaintiff must show that:
25 (1) a serious medical need exists, and (2) defendant's response was deliberately indifferent.
26 Serious medical need can be show by demonstrating that a failure to treat a prisoner could result
27 in significant injury or worsening pain. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). A
28 deliberately indifferent response can be shown by a purposeful act or failure to respond to a

1 prisoner's pain or possible medical need coupled with harm caused by that indifference. Id.

2 Plaintiff's allegations regarding the state of his foot adequately demonstrate the existence
3 of a serious medical need. See Jett, 439 U.S. at 1096. Defendants' failure to treat plaintiff's foot,
4 and their alleged ejection of plaintiff from the clinic without a wheelchair because he objected to
5 an inaccurate refusal slip, support an inference of deliberate indifference on the part of defendants
6 de la Vega and Ramirez. Furthermore, because defendant Sanchez had a duty to intervene but
7 failed to do so, see United States v. Reese, 2 F.3d 870, 887-88 (9th Cir. 1993); Ting v. United
8 States, 927 F.2d 1504, 1511 (9th Cir. 1991), she may also be held liable for violating plaintiff's
9 Eighth Amendment rights.

10 Accordingly, de la Vega, Ramirez and Sanchez will be directed to respond to the FAC
11 once it has been served.

12 B. Failure to State a Claim

13 Plaintiff has not stated a cognizable claim against named defendant Allen, the Chief
14 Medical Officer of CSP-Solano. The FAC contains no facts showing what role—if any—
15 defendant Allen played in violating plaintiff's rights.

16 To the extent that Allen is being sued because of his supervisory position over Ramirez,
17 de la Vega, and Sanchez, plaintiff is informed that a supervisor cannot be held liable under § 1983
18 for the actions of his subordinates simply because he supervises them. There is no vicarious
19 liability under the statute. Hansen v. Black, 885 F.2d 642, 645-46 (9th Cir. 1989). A claim
20 against Allen requires facts showing that he was personally involved in violating plaintiff's
21 Eighth Amendment rights, or that he did or failed to do something that caused the other
22 defendants to violate plaintiff's rights. Starr v. Baca, (9th Cir. 2011) (citing Hansen, 885 F.2d at
23 646). If plaintiff opts to amend the complaint and present a claim against defendant Allen, he
24 should be careful to provide such facts.

25 IV. OPTIONAL LEAVE TO AMEND

26 For the reasons stated above, the court finds that plaintiff has not stated a claim against
27 defendant Curtis Allen, Chief Medical Officer of CSP-Solano. Plaintiff will, however, be given
28 the opportunity to amend the complaint if he wishes.

1 Plaintiff may proceed forthwith to serve the following defendants employed at CSP-
2 Solano for deliberate indifference to his medical needs in violation of the Eighth Amendment:

- 3 • Erika Ramirez, Registered Nurse;
- 4 • Melani de la Vega, Registered Nurse; and
- 5 • Debrina Sanchez, Nurse Practitioner.

6 In the alternative, plaintiff may delay serving these defendants and first amend the
7 complaint.

8 Plaintiff will be required to complete and return the attached notice advising the court how
9 he wishes to proceed. If plaintiff chooses to amend the complaint, he will be given thirty days to
10 file one. If plaintiff elects to proceed on his viable claims against defendants without amending
11 the complaint, the court will proceed to serve the complaint. A decision to go forward without
12 amending the complaint will be considered a voluntarily dismissal without prejudice of the claims
13 that the court has identified as not cognizable.

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

23 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
24 his amended complaint complete. Local Rule 220 requires that an amended complaint be
25 complete in itself without reference to any prior pleading. This is because, as a general rule, an
26 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
27 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
28 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled

1 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,
2 the original complaint no longer serves any function in the case. Therefore, in an amended
3 complaint, as in an original complaint, each claim and the involvement of each defendant must be
4 sufficiently alleged.

5 V. PLAIN LANGUAGE SUMMARY OF THIS ORDER FOR A PRO SE LITIGANT

6 Your allegations against nurses Ramirez, de la Vega and Sanchez state a claim for
7 violation of your Eighth Amendment rights, and they will be required to respond to the complaint.
8 However, you have not provided any facts showing that Chief Medical Officer Allen violated
9 your rights. You cannot sue him for what the other defendants did just because he was their boss
10 or because he was the person responsible for medical care overall; you can only sue him if he did
11 or failed to do something specific that cause the violation of your rights.

12 You have a choice to make. If you want to drop the claim against Dr. Allen and proceed
13 only against defendants Ramirez, de la Vega and Sanchez, you may do so right away. Or you
14 may delay serving Ramirez, de la Vega and Sanchez in order to amend the complaint and try to
15 fix your claim against Dr. Allen.

16 If you want to go forward without amending the complaint, you will be voluntarily
17 dismissing without prejudice any claims against defendant Allen. If you choose to amend your
18 complaint, the amended complaint must include all the claims you want to make, including the
19 ones that have already been found to state a claim, because the court will not look at the claims or
20 information in the original complaint. **Any claims not in the amended complaint will not be**
21 **considered.** You must complete the attached notification showing what you want to do and
22 return it to the court. Once the court receives the notice, it will issue an order telling you what
23 you need to do next (i.e., file an amended complaint or wait for defendants to be served).

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. The court has screened the first amended complaint and finds that it states an
26 Eighth Amendment claim for relief against defendants Erika Ramirez, R.N.; Melani de la Vega,
27 R.N. and Debrina Sanchez, N.P., for deliberate indifference to plaintiff's medical needs.

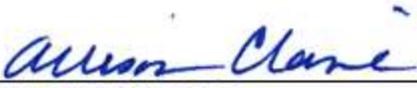
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1 Plaintiff has not stated any cognizable claim against defendant Curtis Allen, CMO of California
2 State Prison – Solano.

3 2. Plaintiff has the options of (a) proceeding immediately on his Eighth Amendment
4 deliberate indifference claims against defendants Erika Ramirez, R.N.; Melani de la Vega, R.N.
5 and Debrina Sanchez, N.P. of California State Prison – Solano, and voluntarily dismissing his
6 claim against Curtis Allen, or (b) amending the complaint.

7 3. Within fourteen days of service of this order, plaintiff shall complete and return
8 the attached form notifying the court whether he wants to proceed on the First Amended
9 Complaint as screened or wants to file a Second Amended Complaint. If plaintiff does not return
10 the form, the court will assume that he is choosing to proceed on the complaint as screened and
11 will recommend the dismissal of defendant Curtis Allen without prejudice.

12 DATED: May 9, 2022

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14 ALLISON CLAIRE
15 UNITED STATES MAGISTRATE JUDGE
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES JONES,
Plaintiff,
v.
CURTIS ALLEN, et al.,
Defendants.

No. 2:20-cv-1984 AC P

PLAINTIFF'S NOTICE ON HOW TO
PROCEED

CHECK ONE:

_____ Plaintiff would like to proceed immediately on his Eighth Amendment deliberate indifference claims against defendants Erika Ramirez, R.N.; Melani de la Vega, R.N., and Debrina Sanchez, N.P. Plaintiff understands that by choosing to go forward without amending the complaint, he is voluntarily dismissing defendant C. Allen and any claims against him pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

_____ Plaintiff would like to amend the complaint.

DATED: _____

CHARLES JONES
Plaintiff Pro Se