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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR BROOKS, JR.,  
Plaintiff,  
v.  
PATRICK COVELLO, et al.,  
Defendants.

No. 2:22-cv-01967-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

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.

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

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
2 § 1915(b)(2).

### 3 **I. Screening Requirement**

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

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
11 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
15 Cir. 1989); Franklin, 745 F.2d at 1227.

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

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

26 At all times relevant to the allegations in the complaint, plaintiff was an inmate at Mule  
27 Creek State Prison. Plaintiff sues the medical doctor who performed surgery on his right hand on  
28 September 6, 2022. He also names the hospital where the surgery was performed, the Warden of

1 Mule Creek State Prison, as well as John Doe I who is employed as the Chief Medical Officer at  
2 the prison. ECF No. 1 at 2.

3 In claim one, plaintiff alleges that the Warden and Chief Medical Officer were  
4 deliberately indifferent to his serious medical needs in violation of the Eighth Amendment  
5 because they are both responsible for the medical care of inmates at Mule Creek. ECF No. 1 at 3.  
6 In this capacity, plaintiff contends that they are responsible for his hand injury as well as his  
7 resulting emotional distress.

8 In his second and third claims, plaintiff raises a supplemental state law claim for medical  
9 malpractice against the defendant doctor at San Joaquin General Hospital who operated on his  
10 right hand. ECF No. 1 at 4-5. Plaintiff contends that his right hand is still swollen following  
11 surgery, he is in severe pain, and that he has limited use of his hand. ECF No. 1 at 4-5.

12 By way of relief, plaintiff seeks compensatory and punitive damages.

### 13 **III. Legal Standards**

14 The following legal standards are provided based on plaintiff's pro se status as well as the  
15 nature of the allegations in the complaint.

#### 16 **A. Linkage**

17 The civil rights statute requires that there be an actual connection or link between the  
18 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
19 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
20 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a  
21 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates  
22 in another's affirmative acts or omits to perform an act which he is legally required to do that  
23 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th  
24 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must  
25 link each named defendant with some affirmative act or omission that demonstrates a violation of  
26 plaintiff's federal rights.

#### 27 **B. Supervisory Liability**

28 Government officials may not be held liable for the unconstitutional conduct of their

1 subordinates under a theory of respondeat superior. Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009)  
2 (“In a § 1983 suit ... the term “supervisory liability” is a misnomer. Absent vicarious liability,  
3 each Government official, his or her title notwithstanding is only liable for his or her own  
4 misconduct.”). When the named defendant holds a supervisory position, the causal link between  
5 the defendant and the claimed constitutional violation must be specifically alleged; that is, a  
6 plaintiff must allege some facts indicating that the defendant either personally participated in or  
7 directed the alleged deprivation of constitutional rights or knew of the violations and failed to act  
8 to prevent them. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Taylor v. List, 880 F.2d  
9 1040, 1045 (9th Cir. 1989); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978).

### 10 C. Deliberate Indifference

11 Denial or delay of medical care for a prisoner’s serious medical needs may constitute a  
12 violation of the prisoner’s Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S.  
13 97, 104-05 (1976). An individual is liable for such a violation only when the individual is  
14 deliberately indifferent to a prisoner’s serious medical needs. Id.; see Jett v. Penner, 439 F.3d  
15 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v.  
16 Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

17 In the Ninth Circuit, the test for deliberate indifference consists of two parts. Jett, 439  
18 F.3d at 1096, citing McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991), overruled on other  
19 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the  
20 plaintiff must show a “serious medical need” by demonstrating that “failure to treat a prisoner’s  
21 condition could result in further significant injury or the ‘unnecessary and wanton infliction of  
22 pain.’” Id., citing Estelle, 429 U.S. at 104. “Examples of serious medical needs include ‘[t]he  
23 existence of an injury that a reasonable doctor or patient would find important and worthy of  
24 comment or treatment; the presence of a medical condition that significantly affects an  
25 individual’s daily activities; or the existence of chronic and substantial pain.’” Lopez, 203 F. 3d  
26 at 1131-1132, citing McGuckin, 974 F.2d at 1059-60.

27 Second, the plaintiff must show the defendant’s response to the need was deliberately  
28 indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act

1 or failure to respond to a prisoner’s pain or possible medical need and (b) harm caused by the  
2 indifference. Id. Under this standard, the prison official must not only “be aware of facts from  
3 which the inference could be drawn that a substantial risk of serious harm exists,” but that person  
4 “must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). This “subjective  
5 approach” focuses only “on what a defendant’s mental attitude actually was.” Id. at 839. A  
6 showing of merely negligent medical care is not enough to establish a constitutional violation.  
7 Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998), citing Estelle, 429 U.S. at 105-106. A  
8 difference of opinion about the proper course of treatment is not deliberate indifference, nor does  
9 a dispute between a prisoner and prison officials over the necessity for or extent of medical  
10 treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058  
11 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Furthermore, mere delay of  
12 medical treatment, “without more, is insufficient to state a claim of deliberate medical  
13 indifference.” Shapley v. Nev. Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985).  
14 Where a prisoner alleges that delay of medical treatment evinces deliberate indifference, the  
15 prisoner must show that the delay caused “significant harm and that Defendants should have  
16 known this to be the case.” Hallett, 296 F.3d at 745-46; see McGuckin, 974 F.2d at 1060.

#### 17 **D. Supplemental State Law Claims**

18 “[I]n any civil action of which the district courts have original jurisdiction, the district  
19 courts shall have supplemental jurisdiction over all other claims that are so related to claims in the  
20 action within such original jurisdiction that they form part of the same case or controversy under  
21 Article III of the United States Constitution.” 28 U.S.C. § 1367(a). However, “once judicial  
22 power exists under § 1367(a), retention of supplemental jurisdiction over state law claims under  
23 1367(c) is discretionary” since primary responsibility for developing and applying state law rests  
24 with the state courts. Acri v. Varian Assoc., Inc., 114 F.3d 999, 1000 (9th Cir. 1997) (en banc).

#### 25 **E. Exhaustion Requirement**

26 Plaintiff is advised that under 42 U.S.C. § 1997e(a) “[n]o action shall be brought with  
27 respect to prison conditions under section 1983 of this title, or any other Federal law, by a  
28 prisoner confined in any jail, prison, or other correctional facility until such administrative

1 remedies as are available are exhausted.”

#### 2 **IV. Analysis**

3 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon  
4 which relief can be granted under federal law. The Eighth Amendment deliberate indifference  
5 claim against defendants Covello and John Doe I are based entirely on their role as supervisors at  
6 Mule Creek. However, government officials may not be held liable for the unconstitutional  
7 conduct of their subordinates under a theory of respondeat superior. Ashcroft v. Iqbal, 556 U.S.  
8 662, 677 (2009). The allegations against defendant Dowbak, who performed the surgery, are all  
9 based on state law violations. Because the complaint has not properly pleaded any federal claim,  
10 this court will not exercise its discretion to retain supplemental jurisdiction over these state law  
11 claims. See 28 U.S.C. § 1367(c)(3) (explaining that district courts may decline to exercise  
12 supplemental jurisdiction over state law claims when it has dismissed all claims over which it has  
13 original jurisdiction). For all these reasons, the complaint must be dismissed. The court will,  
14 however, grant leave to file an amended complaint.

15 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
16 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.  
17 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how  
18 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there  
19 is some affirmative link or connection between a defendant’s actions and the claimed deprivation.  
20 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);  
21 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory  
22 allegations of official participation in civil rights violations are not sufficient. Ivey v. Bd. of  
23 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

24 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to  
25 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended  
26 complaint be complete in itself without reference to any prior pleading. This is because, as a  
27 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
28 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no

1 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
2 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

3 **V. Plain Language Summary for Pro Se Party**

4 The following information is meant to explain this order in plain English and is not  
5 intended as legal advice.

6 The court has reviewed the allegations in your complaint and determined that they do not  
7 state any federal claim against the defendants. Your complaint is being dismissed, but you are  
8 being given the chance to fix the problems identified in this screening order.

9 Although you are not required to do so, you may file an amended complaint within 30  
10 days from the date of this order. If you choose to file an amended complaint, pay particular  
11 attention to the legal standards identified in this order which may apply to your claims.

12 In accordance with the above, IT IS HEREBY ORDERED that:

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

14 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
15 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
16 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
17 Director of the California Department of Corrections and Rehabilitation filed concurrently  
18 herewith.

19 3. Plaintiff's complaint is dismissed.

20 4. Plaintiff is granted thirty days from the date of service of this order to file an amended  
21 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
22 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number  
23 assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and  
24 two copies of the amended complaint; failure to file an amended complaint in accordance with  
25 this order will result in a recommendation that this action be dismissed.

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1 Dated: May 19, 2023

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*Carolyn K. Delaney*

CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE