

1 entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply,
2 concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to
3 Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice
4 of the plaintiff’s claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121,
5 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity
6 overt acts by specific defendants which support the claims, vague and conclusory allegations fail
7 to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening
8 required by law when the allegations are vague and conclusory.

10 I. BACKGROUND

11 A. Procedural History

12 Plaintiff initiated this action with a pro se complaint filed on October 4, 2023. See
13 ECF No. 1. On January 31, 2024, the original complaint was dismissed with leave to amend. See
14 ECF No. 8, pg. 2. Plaintiff filed his first amended complaint on February 22, 2024. See ECF No.
15 9.

16 B. Plaintiff’s Allegations

17 Plaintiff names the following as defendants: (1) Jeff Dirske, the Stanislaus County
18 Sheriff; (2) Stanislaus County; (3) Wellpath, the medical provider for Stanislaus County jails; and
19 (4) Dr. Hoe, a physician with Wellpath. See id. at 1, 2.

20 Plaintiff alleges that his Eighth Amendment rights against cruel and unusual
21 punishment have been violated by Defendants for refusal to treat his worsened hip injury. See id.
22 at 3. Plaintiff claims that he is unable to walk or support any weight since the hip injury has
23 spread to his knee and back. See id. Allegedly, Plaintiff was told he needed a new hip in
24 Modesto, but Defendants said the situation wasn’t an emergency and that Plaintiff “should have
25 taken care of it out there.” See id. Plaintiff claims that Stanislaus County has a contract with
26 some entity for a set amount each year, which incentivizes withholding medical
27 services/treatments so that Defendants may pocket the money. See id. According to the
28 complaint, it has been six months since Plaintiff’s injury should have been treated, resulting in

1 severe pain and mental anguish. See id.

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3 **II. DISCUSSION**

4 Plaintiff's first amended complaint suffers from a number of related defects. First,
5 Plaintiff has not established a causal connection between Defendant Hoe and the claimed Eighth
6 Amendment violation. Second, Plaintiff has failed to allege any facts that would establish the
7 supervisory liability of Defendant Dirske as the Stanislaus County Sheriff. Third, Plaintiff has not
8 established any facts showing a municipal custom or policy such as Stanislaus County would be
9 liable. Finally, Plaintiff has not alleged facts sufficient to establish the liability of Wellpath.

10 **A. Causal Connection**

11 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual
12 connection or link between the actions of the named defendants and the alleged deprivations. See
13 Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A
14 person 'subjects' another to the deprivation of a constitutional right, within the meaning of
15 § 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform
16 an act which he is legally required to do that causes the deprivation of which complaint is made."
17 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations
18 concerning the involvement of official personnel in civil rights violations are not sufficient. See
19 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth
20 specific facts as to each individual defendant's causal role in the alleged constitutional
21 deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

22 Here, Plaintiff has not established any affirmative actions taken by Defendant Hoe
23 that caused the alleged Eighth Amendment violation. The assertions are vague and conclusory as
24 to Defendant Hoe's involvement, which is not enough to make the complaint sufficient. Plaintiff
25 will be provided with another opportunity to amend the complaint but should take care in
26 referencing the rules outlined in this order.

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1 **B. Supervisory Liability**

2 As a general rule, supervisory personnel are not liable under § 1983 for the actions
3 of their employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is
4 no respondeat superior liability under § 1983). A supervisor is only liable for the constitutional
5 violations of subordinates if the supervisor participated in or directed the violations. See id.
6 Government officials, regardless of their title, can only be held liable under § 1983 for his or her
7 own conduct, not the conduct of others. See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). As
8 such, a supervisory defendant can't be liable based on knowledge and acquiescence in a
9 subordinate's unconstitutional conduct. See id. Supervisory personnel who implement a policy
10 so deficient that the policy itself is a repudiation of constitutional rights and the moving force
11 behind a constitutional violation may be liable even where such personnel do not overtly
12 participate in the offensive act. See Redman v. Cnty of San Diego, 942 F.2d 1435, 1446 (9th Cir.
13 1991) (en banc).

14 When a defendant holds a supervisory position, the causal link between such
15 defendant and the claimed constitutional violation must be specifically alleged. See Fayle v.
16 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.
17 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel in
18 civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
19 Cir. 1982). “[A] plaintiff must plead that each Government-official defendant, through the
20 official's own individual actions, has violated the constitution.” See Iqbal, 556 U.S. at 676.

21 Here, Plaintiff has not made any specific factual claims as to Defendant Dirske's
22 personal involvement as the county sheriff in the alleged Eighth Amendment violation. Because
23 mere knowledge and acquiescence in unconstitutional conduct is not enough to show supervisory
24 liability, Plaintiff must show how Defendant Dirkse's own conduct resulted in the violation.
25 Plaintiff will be provided an opportunity to amend.

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1 **C. Municipal Custom/Policy**

2 Municipalities and other local government units are among those “persons” to
3 whom § 1983 liability applies. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978).
4 Counties and municipal government officials are also “persons” for purposes of § 1983. See id.
5 at 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local
6 government unit, however, may not be held responsible for the acts of its employees or officials
7 under a respondeat superior theory of liability. See Bd. of County Comm’rs v. Brown, 520 U.S.
8 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not of
9 the actions of its employees or officers. See id. To assert municipal liability, therefore, the
10 plaintiff must allege that the constitutional deprivation complained of resulted from a policy or
11 custom of the municipality. See id.

12 Here, Plaintiff has not made any claims specific to Stanislaus County, nor alleged
13 that a municipal policy or custom caused the alleged Eighth Amendment violation. Plaintiff will
14 be provided an opportunity to amend.

15 **D. Wellpath**

16 A § 1983 claim can only hold liable a “person” that acted under color of state law.
17 42 U.S.C. § 1983. Private entities are generally not considered suable persons under § 1983. See
18 Price v. Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991); Simmons v. Sacramento Cty. Superior
19 Court, 318 F.3d 1156, 1161 (9th Cir. 2003). However, if a private entity performs a function that
20 is traditionally and historically the “exclusive” function of the state, it can become a state actor.
21 See Flagg Bros. v. Brooks, 436 U.S. 149, 157-58 (1978); Jackson v. Metro. Edison Co., 419 U.S.
22 345, 352 (1974).

23 The Eleventh Amendment prohibits federal courts from hearing suits brought
24 against a state both by its own citizens, as well as by citizens of other states. See Brooks v.
25 Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition
26 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep’t
27 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th
28 Cir. 1989). A state’s agency responsible for incarceration and correction of prisoners is a state

1 agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782
2 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en banc).
3 Therefore, when a private entity steps in for the state itself, it is immune from § 1983 liability
4 under the Eleventh Amendment.

5 Unlike the state itself, municipalities and local government units are “persons”
6 under § 1983. See Monell, 436 U.S. at 690. To hold a municipal entity liable, a plaintiff must
7 show that the municipality had a custom or policy that was the “moving force” behind a violation
8 of the plaintiff’s constitutional rights. See id. at 694. Therefore, when a private entity steps in for
9 a municipality or other local government unit, a plaintiff must show that there was a custom or
10 policy implemented by the entity that resulted in a violation of the plaintiff’s constitutional rights.

11 Here, Wellpath is a private entity under contract to provide medical care for
12 Stanislaus County inmates such as Plaintiff. Wellpath, in providing medical care for county
13 inmates, performs a function that is traditionally the exclusive function of the county itself and, as
14 such, stands in for the county. As such, as with Stanislaus County, discussed above, Plaintiff
15 must allege that Wellpath followed a policy or custom which resulted in a violation of Plaintiff’s
16 constitutional rights. Here, however, Plaintiff has not alleged any custom or policy implemented
17 by Wellpath that acted as a driving force for the violation of his rights. Plaintiff will be provided
18 an opportunity to amend.

20 III. CONCLUSION

21 Because it is possible that the deficiencies identified in this order may be cured by
22 amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire
23 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
24 informed that, as a general rule, an amended complaint supersedes the original complaint. See
25 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
26 amend, all claims alleged in the original complaint which are not alleged in the amended
27 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
28 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make

1 Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be
2 complete in itself without reference to any prior pleading. See id.

3 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
4 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
5 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
6 each named defendant is involved and must set forth some affirmative link or connection between
7 each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167
8 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

9 Finally, Plaintiff is warned that failure to file an amended complaint within the
10 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
11 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
12 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
13 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's first amended complaint is dismissed with leave to amend; and
- 16 2. Plaintiff shall file a second amended complaint within 30 days of the date
17 of service of this order.

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19 Dated: July 8, 2024



20 DENNIS M. COTA
21 UNITED STATES MAGISTRATE JUDGE
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