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3 IN THE UNITED STATES DISTRICT COURT  
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 PAUL SAMUEL JOHNSON,

9 Plaintiff,

10 v.

11 CHAPPELL, Warden, CDC STAFF,  
12 STATE OF CALIFORNIA, UNITED  
13 STATES GOVERNMENT, and MEDICAL  
14 STAFF AT SAN QUENTIN STATE  
PRISON,

15 Defendants.

Case No.: C 14-1300 CW (PR)

ORDER OF DISMISSAL WITH LEAVE  
TO AMEND

16 INTRODUCTION

17 Plaintiff, a state prisoner incarcerated at San Quentin State  
18 Prison (SQSP), has filed a pro se civil rights action pursuant to  
19 42 U.S.C. § 1983, alleging the violation of his constitutional  
20 rights. His motion for leave to proceed in forma pauperis is  
21 granted in a separate order.

22 DISCUSSION

23 I. Legal Standard

24 A federal court must conduct a preliminary screening in any  
25 case in which a prisoner seeks redress from a governmental entity  
26 or officer or employee of a governmental entity. 28 U.S.C.  
27 § 1915A(a). In its review, the court must identify any cognizable  
28 claims and dismiss any claims that are frivolous, malicious, fail

1 to state a claim upon which relief may be granted or seek monetary  
2 relief from a defendant who is immune from such relief. Id.  
3 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.  
4 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
5 1988).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
7 allege two essential elements: (1) that a right secured by the  
8 Constitution or laws of the United States was violated, and  
9 (2) that the alleged violation was committed by a person acting  
10 under the color of state law. West v. Atkins, 487 U.S. 42, 48  
11 (1988).

12 Liability may be imposed on an individual defendant under 42  
13 U.S.C. § 1983 if the plaintiff can show that the defendant's  
14 actions both actually and proximately caused the deprivation of a  
15 federally protected right. Lemire v. Cal. Dept. Corrections &  
16 Rehabilitation, 726 F.3d 1062, 1074 (9th Cir. 2013); Leer v.  
17 Murphy, 844 F.2d 628, 634 (9th Cir. 1988. A person deprives  
18 another of a constitutional right within the meaning of section  
19 1983 if he does an affirmative act, participates in another's  
20 affirmative act or omits to perform an act which he is legally  
21 required to do, that causes the deprivation of which the plaintiff  
22 complains. Leer, 844 F.2d at 633. Under no circumstances is  
23 there respondeat superior liability under section 1983. Lemire,  
24 727 F.3d at 1074. Or, in layman's terms, under no circumstances  
25 is there liability under section 1983 solely because one is  
26 responsible for the actions or omissions of another. Taylor v.  
27 List, 880 F.2d 1040, 1045 (9th Cir. 1989); Ybarra v. Reno  
28 Thunderbird Mobile Home Village, 723 F.2d 675, 680-81 (9th Cir.  
1984). A supervisor may be liable under section 1983 upon a

1 showing of (1) personal involvement in the constitutional  
2 deprivation or (2) a sufficient causal connection between the  
3 supervisor's wrongful conduct and the constitutional violation.  
4 Henry A. v. Willden, 678 F.3d 991, 1003-04 (9th Cir. 2012). It is  
5 insufficient for a plaintiff only to allege that supervisors knew  
6 about the constitutional violation and that they generally created  
7 policies and procedures that led to the violation, without  
8 alleging "a specific policy" or "a specific event" instigated by  
9 them that led to the constitutional violations. Hydrick v.  
10 Hunter, 669 F.3d 937, 942 (9th Cir. 2012)

## 11 II. Plaintiff's Allegations

12 In his complaint, Plaintiff alleges the following. Plaintiff  
13 suffers from degenerative disc disease of the lumber spine,  
14 degenerative disease of the right hip and scoliosis of the upper  
15 spine which cause him severe nerve pain. One of Plaintiff's legs  
16 is longer than the other which adds to his spine and hip pain.  
17 Plaintiff also has an umbilical hernia which causes him a high  
18 level of pain. Three days prior to his arrest on August 11, 2013,  
19 Plaintiff "fell three-stories" and, as a result of this fall,  
20 there is something wrong with his right shoulder, head and spine.  
21 Plaintiff suffers from post-traumatic stress disorder and has  
22 memory problems because of his head injuries.

23 SQSP medical staff refuse to provide Plaintiff with proper  
24 pain medication or to order X-rays or MRIs for his spine, hip,  
25 shoulder and head injuries. Medical staff also refuse to provide  
26 Plaintiff with mobility devices such as a cane, orthotic shoes, a  
27 shoe lift and a lower tier bunk.

28 Plaintiff seeks damages and a preliminary injunction  
requesting relief such as: (1) X-rays and MRIs for his spine, hip,

1 shoulder and head; (2) narcotic pain medication three times per  
2 day; (3) mobility devices; (4) regular appointments with mental  
3 health staff; (5) a sonogram for his heart valves because he  
4 suffers from heart pain and has symptoms of heart trouble; (6) a  
5 prostate examination because he has had problems using the  
6 bathroom for the last four years; and (7) transfer to another  
7 prison because, in 2008 when he was at SQSP, he was falsely  
8 accused and convicted of a "threat to staff" charge and now feels  
9 that he is in danger from correctional officers.

10 A. Claim for Deliberate Indifference to Serious Medical Needs

11 Deliberate indifference to a prisoner's serious medical needs  
12 violates the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97,  
13 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir.  
14 1992), overruled on other grounds, WMX Technologies, Inc. v.  
15 Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A prison  
16 official violates the Eighth Amendment only when two requirements  
17 are met: (1) the deprivation alleged is, objectively, sufficiently  
18 serious, and (2) the official is, subjectively, deliberately  
19 indifferent to the inmate's health or safety. Farmer v. Brennan,  
20 511 U.S. 825, 834 (1994). A "serious" medical need exists if the  
21 failure to treat a prisoner's condition could result in further  
22 significant injury or the "unnecessary and wanton infliction of  
23 pain." McGuckin, 974 F.2d at 1059. A prison official exhibits  
24 deliberate indifference when he knows of and disregards a  
25 substantial risk of serious harm to inmate health or safety.  
Farmer, 511 U.S. at 837.

26 In order for deliberate indifference to be established, there  
27 must be a purposeful act or failure to act on the part of the  
28 defendant and resulting harm. McGuckin, 974 F.2d at 1060.

1 Deliberate indifference may be shown when prison officials deny,  
2 delay or intentionally interfere with medical treatment, or it may  
3 be shown in the way in which they provide medical care. Id. at  
4 1062.

5 1. Claim for Damages

6 The allegations in Plaintiff's complaint fail to state a  
7 claim for deliberate indifference to his serious medical needs.  
8 Even if Plaintiff's medical conditions qualify as serious medical  
9 needs, he fails to name any specific individual who failed to  
10 treat his medical needs. He mentions that "a Russian sounding  
11 nurse" made fun of his 602 appeal and he "thinks" his doctor's  
12 name is "Dr. Hanna," but he is not sure and refers to her as "Dr.  
13 Jane Doe." These allegations fail to identify sufficiently any  
14 individual who violated Plaintiff's Eighth Amendment rights.  
15 Therefore, Plaintiff's Eighth Amendment claim for damages must be  
16 dismissed with leave to amend for Plaintiff to name specific  
17 individuals who denied him medical care with the state of mind  
18 that amounts to deliberate indifference. See Leer, 844 F.2d at  
19 634. To show an individual acted with deliberate indifference,  
20 Plaintiff must include factual allegations indicating how that  
21 person denied, delayed or intentionally interfered with  
22 Plaintiff's medical treatment, or provided medical care in a way  
23 that indicates his or her deliberate indifference. See McGuckin,  
24 974 F.2d at 1062. To state a cognizable claim that a supervisor  
25 acted with deliberate indifference, Plaintiff must include factual  
26 allegations that the supervisor had (1) personal involvement in  
27 the constitutional deprivation or (2) a sufficient causal  
28 connection between the supervisor's wrongful conduct and the  
constitutional violation. See Henry, 678 F.3d at 1003-04.

1           2. Request for Immediate Injunctive Relief

2           The Court interprets Plaintiff's request for immediate  
3 injunctive relief as a request for a temporary restraining order  
4 (TRO) or preliminary injunction. This request must be denied for  
5 failure to satisfy the notice requirements of Federal Rule of  
6 Civil Procedure 65. Prior to granting a preliminary injunction,  
7 notice to the adverse party is required. Fed. R. Civ. P.  
8 65(a)(1). A request for a preliminary injunction therefore cannot  
9 be decided until the parties to the action are served, and they  
10 have not yet been served here. See Zepeda v. INS, 753 F.2d 719,  
11 727 (9th Cir. 1983). A TRO may be granted without written or oral  
12 notice to the adverse party or that party's attorney if: (1) it  
13 clearly appears from specific facts shown by affidavit or by the  
14 verified complaint that immediate and irreparable injury, loss or  
15 damage will result to the applicant before the adverse party or  
16 the party's attorney can be heard in opposition, and (2) the  
17 applicant's attorney (plaintiff himself in this case, as he  
18 proceeds pro se) certifies in writing the efforts, if any, which  
19 have been made to give notice and the reasons supporting the claim  
20 that notice should not be required. Fed. R. Civ. P. 65(b).  
21 Plaintiff has not satisfied either requirement.

22           The standards for issuing a TRO and preliminary injunction  
23 are the same. See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox  
24 Co., 434 U.S. 1345, 1347 n.2 (1977). A preliminary injunction is  
25 "an extraordinary remedy that may only be awarded upon a clear  
26 showing that the plaintiff is entitled to such relief." Winter v.  
27 Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). The  
28 proper legal standard for preliminary injunctive relief requires a  
party to demonstrate "(1) that he is likely to succeed on the

1 merits, (2) that he is likely to suffer irreparable harm in the  
2 absence of preliminary relief, (3) that the balance of equities  
3 tips in his favor, and (4) that an injunction is in the public  
4 interest." Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th  
5 Cir. 2009).

6 As a corollary to this test, the Ninth Circuit has also found  
7 a preliminary injunction appropriate if "serious questions going  
8 to the merits were raised and the balance of the hardships tips  
9 sharply in the plaintiff's favor," thereby allowing preservation  
10 of the status quo where complex legal questions require further  
11 inspection or deliberation. Alliance for the Wild Rockies v.  
12 Cottrell, 622 F.3d 1045, 1049 (9th Cir. 2010).

13 At this early stage in the proceeding, it is not possible to  
14 determine if Plaintiff meets the test for injunctive relief.  
15 Therefore, the claims for injunctive relief will not be addressed  
16 until Plaintiff's claims are served on properly named Defendants.

17 B. Claim for Unsafe Prison Conditions

18 In his request for injunctive relief, Plaintiff alludes to  
19 the fact that SQSP is not safe for him because he feels threatened  
20 by unnamed officers.

21 The Eighth Amendment requires that prison officials take  
22 reasonable measures to guarantee the safety of prisoners. Farmer,  
23 511 U.S. at 832. The failure of prison officials to protect  
24 inmates from dangerous conditions at the prison violates the  
25 Eighth Amendment only when two requirements are met: (1) the  
26 deprivation alleged is, objectively, sufficiently serious; and  
27 (2) the prison official is, subjectively, deliberately indifferent  
28 to inmate safety. Id. at 834.

1 A claim of deliberate indifference to Plaintiff's safety  
2 fails because he has not named any individual in relation to this  
3 claim. If Plaintiff wishes to re-allege this claim, he may do so  
4 in an amended complaint, naming specific individuals and including  
5 factual allegations showing how they acted with deliberate  
6 indifference to his safety.

7 CONCLUSION

8 For the foregoing reasons, the Court orders as follows:

9 1. Plaintiff's complaint is DISMISSED.

10 2. Within twenty-eight (28) days from the date of this  
11 Order, Plaintiff may file an amended complaint in order to cure  
12 the deficiencies noted above.

13 Plaintiff shall use the court's civil rights complaint form,  
14 a copy of which is provided herewith, and include in the caption  
15 both the case number of this action, No. C 14-1300 CW (PR), and  
16 the heading "AMENDED COMPLAINT." Because an amended complaint  
17 completely replaces the original complaint, Plaintiff must include  
18 in it all the claims he wishes to present. See Ferdik v.  
19 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not  
20 incorporate material from the original complaint by reference.

21 If Plaintiff fails timely to file an amended complaint in  
22 conformity with this Order, the case will be dismissed without  
23 prejudice and will be closed.

24 3. It is Plaintiff's responsibility to prosecute this case.  
25 He must keep the Court informed of any change of address and  
26 must comply with the Court's orders in a timely fashion.

27 Failure to do so may result in the dismissal of this action,  
28 pursuant to Federal Rule of Civil Procedure 41(b), for failure to  
prosecute.



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4. The Clerk of the Court shall provide Plaintiff with a blank civil rights complaint form.

Dated: 6/5/2014

  
CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE