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

Jack Allen Wilson,)	No. CV 1-06-01393-JMR
Plaintiff,)	ORDER
vs.)	
Edward Alamedia, Jr., et al.,)	
Defendants.)	

This case was reassigned to the undersigned judge on November 26, 2008. (Doc.# 8.)¹ Plaintiff Jack Allen Wilson, a former California state inmate, now residing in Marysville, Indiana, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and was granted leave to proceed *in forma pauperis*. (Doc.# 1, 4.) Plaintiff subsequently filed a First Amended Complaint.² (Doc.# 7.) Defendants Alamedia, Woodford, Rawers, Cuttillo, Adams, Lais, Depner, and Nguyen are ordered to respond to Plaintiff’s claims in his First Amended Complaint regarding exposure to environmental and secondhand smoke and deliberate indifference to his serious medical needs based on the failure to provide

¹ “Doc.#” refers to the docket number of filings in this case. This is one of nearly 200 cases accepted by district judges in the District of Arizona to help the Eastern District of California.

² The First Amended Complaint supersedes the original in its entirety. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

1 medications when he was paroled. The remaining claims and Defendants are dismissed
2 without prejudice.

3 **I. Statutory Screening of Complaints**

4 The Court is required to screen complaints seeking relief against a governmental
5 entity or an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). The
6 Court must dismiss a complaint or portion thereof if a plaintiff has raised claims that are
7 legally frivolous or malicious, that fail to state a claim upon which relief may be granted, or
8 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
9 § 1915A(b)(1), (2).

10 **II. First Amended Complaint**

11 Plaintiff asserts violation of his First and Eighth Amendment rights and state law. He
12 sues: Directors of California Department of Corrections and Rehabilitation (CDC), Edward
13 Alamedia, Jr., and Jeanne Woodford; Scott Rawers, warden of Avenal State Prison (ASP);
14 Judy Cuttillo, a captain at ASP; K.J. Depner, a sergeant at ASP; Derral Adams, warden of
15 Corcoran Substance Abuse Treatment Facility (CSATF); Drs. Kyle and Nguyen, physicians
16 at CSATF; Jack Lais, a Facility Captain at CSATF; and Does 1-10, correctional and medical
17 staff at ASP or CSATF. Plaintiff seeks compensatory and punitive damages.

18 Plaintiff alleges that he is (and was) diabetic and wheelchair dependent. He alleges
19 that he is now suffering from lung, head, and neck cancer, loss of teeth, and disability due
20 to his exposure to “Environmental Tobacco Smoke” (ETS) or “Secondhand Tobacco Smoke”
21 (STS) at ASP and CSATF. Plaintiff alleges the following facts:

22 On December 2, 2002, Plaintiff was transferred from Corcoran State Prison to ASP,
23 where he was daily exposed to ETS/STS in the housing units. (Id. at 11.) Plaintiff
24 complained and filed a grievance regarding that exposure to ETS/STS. Unidentified
25 corrections officers disclosed Plaintiff’s complaints and grievances to other inmates resulting
26 in inmates threatening Plaintiff. (Id. at 15.)

27 On December 15, 2002, Plaintiff appealed to the second level of review, which was
28 denied by Warden Rawers without addressing Plaintiff’s complaints about exposure to

1 ETS/STS. (Id.) The same day, Plaintiff also filed a “CDC-ADA 1824 Form” because he was
2 “continuously suffering from the ill-effects of secondhand smoke.”³ (Id. at 14.) On
3 December 17, 2002, that “appeal” was screened out as a living condition to be grieved on a
4 CDC-602, rather than an ADA issue. (Id.) On December 20, 2002, Plaintiff filed another
5 CDC-602 appeal, but did not receive a response. (Id.)

6 On January 18, 2003, Depner responded to Plaintiff’s appeal and informed Plaintiff
7 that he lacked the ability to grant his request for a transfer, but did not address Plaintiff’s
8 complaints about exposure to ETS/STS. (Id. at 12-13.) Plaintiff contends that Depner
9 deliberately failed to respond to his ETS/STS issues and thereby retaliated against him and
10 chilled the exercise of his First Amendment rights. (Id. at 13.) On January 19, 2003,
11 Plaintiff appealed to the next level but received no response. (Id. at 14.) On this basis, he
12 contends that Depner acted in concert with Rawers and Cuttillo to deny him a grievance
13 process in violation of his First and Eighth Amendment rights. (Id.)

14 On February 3, 2003, Plaintiff continued his CDC-602 appeal to the Director’s level,
15 which was denied by Director Alamieda without addressing Plaintiff’s complaints about
16 exposure to ETS/STS. (Id. at 12.) On February 5, 2003, Plaintiff’s mother called Rawers
17 and informed him that Plaintiff’s safety was being threatened by other inmates. (Id. at 15.)
18 Rawers called a housing officer, one of the Doe Defendants, and told the officer to have “an
19 inmate ‘go and find out who was threatening [Plaintiff’s] life.’” (Id.) The inmate assigned
20 allegedly told “all the other inmates” that Plaintiff was complaining about them smoking in
21 housing units. (Id.) On this basis, Plaintiff contends that “Rawers acted in concert with the
22 housing officer to bring immediate and future harm” to Plaintiff. (Id.) The other inmates
23 began yelling at Plaintiff “‘your [sic] dead Wilson!’” (Id. at 16.) Plaintiff then spoke with
24 Captain Cuttillo, who “refused to hear the plaintiffs [sic] expirations [sic]” but instead placed
25 Plaintiff in administrative segregation where he remained until his transfer to CSATF on July
26

27 ³ Plaintiff repeatedly states that exposure to ETS/STS aggravated his existing serious
28 medical condition and caused severe headaches, dizziness, nausea, vomiting, and breathing
problems, among other symptoms.

1 1, 2003. (Id.)

2 In administrative segregation, other inmates “were continuously allowed to smoke
3 tobacco” pursuant to an unwritten policy that “subjected Plaintiff to immediate and future
4 harm.” (Id.) On February 18, 2003, Plaintiff was interviewed by Depner and Cuttillo who
5 asked for the names of the inmates that had threatened him. (Id.) Plaintiff informed them
6 that the whole prison yard was threatening him. (Id.) Cuttillo threatened to return Plaintiff
7 to the yard and let other inmates kill him if he did not provide the names of those who had
8 threatened him. (Id.) Plaintiff again stated that he could not provide names. (Id.) Cuttillo
9 yelled at Plaintiff and told him he would be in administrative segregation for a long time and
10 would not be getting time out of his cell and stated, “now keep writing 602’s” and yelled
11 “secondhand smoke!” (Id.) While he remained in administrative segregation, Plaintiff
12 contends that Doe Defendants working in the administrative segregation unit acted in concert
13 with Rawers, Cuttillo, and Depner to deliberately deny Plaintiff yard time, showers,
14 visitation, law library visits, personal property, cleaning supplies, and clean clothes because
15 he exercised his First Amendment right to seek redress of grievances. (Id. at 16-17.)

16 On July 1, 2003, Plaintiff was transferred from ASP to a CSATF dormitory, where
17 he remained until his parole on July 10, 2005. (Id. at 17.) Upon his arrival, Plaintiff asked
18 Doe housing officers for a transfer to a smoke-free environment due to medical problems he
19 suffered from smoke. (Id.) The officers told him they could not do anything and told him
20 to go away. (Id.) On July 15, 2003, Plaintiff filed “a 602-appeal ‘EMERGENCY
21 APPEAL’” stating that he was suffering adverse effects from STS in his housing unit and
22 that housing officers were unwilling to stop inmates from smoking in the unit. (Id. at 18.)
23 Plaintiff did not receive a response, which he contends violated his right to a prison grievance
24 procedure. (Id.) He contends that Woodford, Adams, Kyle and Does 1-10 failed to respond
25 to his appeals about STS. (Id.)

26 On September 15, 2003, Facility Captain Jack Lais interviewed Plaintiff about several
27 inmate appeals regarding STS, but told Plaintiff there was nothing he could do about the
28 issue. (Id. at 18-19.) Plaintiff never received responses to numerous appeals concerning

1 STS. (Id. at 19.) Plaintiff asserts that Lais was deliberately indifferent to Plaintiff's serious
2 medical needs or to conditions posing a serious risk of harm. (Id.)

3 On June 9, 2005, Plaintiff was seen by CSATF's dentist for a swollen lymph gland
4 on the right side of his neck, which a medical technical assistant thought was the result of an
5 abscessed tooth. (Id.) On June 13, 2005, Plaintiff was examined by Dr. Nguyen, a physician,
6 who gave him a seven-day supply of antibiotics, but who denied Plaintiff's request to be
7 examined by an outside specialist. (Id. at 19, 20.) Plaintiff contends that Dr. Nguyen acted
8 with deliberate indifference to his serious medical needs by intentionally failing to diagnose
9 the lymph node or treat it. (Id.) He further contends that Dr. Nguyen also failed to provide
10 him with 30-day supply of insulin, syringes, blood pressure and cholesterol medications,
11 among others, prior to his release on parole.⁴ (Id. at 19.) Plaintiff contends that Woodford,
12 Adams, and Nguyen are responsible for the failure to provide 30-day supplies of medications
13 upon Plaintiff's parole to Indiana from CSATF on July 10, 2005. (Id. at 19, 20.)

14 Because Plaintiff lacked medications for his health conditions between July 10-17,
15 2005, he became severely ill and went to an emergency room of the Veterans Medical Center
16 in Indianapolis. (Id. at 20-21.) A physician there referred Plaintiff for a CT-scan. (Id. at 21.)
17 On July 28, 2005, Plaintiff had the first of several biopsies. (Id.) On August 25, 2005, he
18 was diagnosed with lung cancer and cancer of the tongue. (Id.) On September 15, 2005,
19 Plaintiff had a further biopsy and on September 19, 2005, was informed that he had
20 squamous cell cancer. (Id.) On September 20, 2005, eight of Plaintiff's molars were
21 extracted at the Veterans Hospital. (Id.)

22 **III. Failure to State a Claim**

23 To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the
24 conduct about which he complains was committed by a person acting under the color of state
25 law and (2) the conduct deprived him of a federal constitutional or statutory right. Wood v.
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27 ⁴ According to Plaintiff, Dr. Nguyen was responsible for ensuring that Plaintiff would
28 have medication available for a period of time reasonably necessary to consult a new
physician and obtain a new supply when he was paroled. (Id.)

1 Ostrander, 879 F.2d 583, 587 (9th Cir. 1989). Negligence by a defendant acting under color
2 of state law is not sufficient to state a claim under § 1983. Daniels v. Williams, 474 U.S.
3 327, 330-31 (1986) (plaintiff must plead more than mere negligence in a § 1983 action); see
4 Alfrey v. United States, 276 F.3d 557, 568 (9th Cir. 2002). Further, a plaintiff must also
5 allege that he suffered a specific injury as a result of the conduct of a particular defendant
6 and he must allege an affirmative link between the injury and the conduct of that defendant.
7 Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976).

8 **A. Does 1-10**

9 Plaintiff sues Does 1-10, without differentiating how any particular fictitiously named
10 Defendant allegedly violated his constitutional rights. Generally, the use of anonymous type
11 appellations to identify defendants is not favored. Rule 10(a) of the Federal Rules of Civil
12 Procedure requires the plaintiff to include the names of the parties in the action. As a
13 practical matter, it is impossible in most instances for the United States Marshal or his
14 designee to serve a summons and complaint or amended complaint upon an anonymous
15 defendant.

16 The Ninth Circuit has held that where identity is unknown prior to the filing of a
17 complaint, the plaintiff should be given an opportunity through discovery to identify the
18 unknown defendants, unless it is clear that discovery would not uncover the identities, or that
19 the complaint would be dismissed on other grounds. Wakefield v. Thompson , 177 F.3d
20 1160, 1163 (9th Cir. 1999) (citing Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)).
21 Plaintiff may use the discovery processes to obtain the names of the persons whom he
22 believes violated his constitutional rights. If Plaintiff discovers the identities of these
23 fictitious defendants through the discovery process, or otherwise, he may seek leave of the
24 Court to amend to name these individuals.

25 **B. Dr. Kyle**

26 Plaintiff sues Dr. Kyle. Although Dr. Kyle may properly be sued for constitutional
27 violations, Plaintiff fails to state a claim against him. “A plaintiff must allege facts, not
28 simply conclusions, that show that an individual was personally involved in the deprivation

1 of his civil rights.” Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998). For an
2 individual to be liable in his official capacity, a plaintiff must allege that the official acted
3 as a result of a policy, practice, or custom. See Cortez v. County of Los Angeles, 294 F.3d
4 1186, 1188 (9th Cir. 2001). Further, there is no *respondeat superior* liability under § 1983,
5 so a defendant’s position as the supervisor of a someone who allegedly violated a plaintiff’s
6 constitutional rights does not make him liable. Monell v. Dep’t of Soc. Servs., 436 U.S. 658,
7 691 (1978); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor in his
8 individual capacity, “is only liable for constitutional violations of his subordinates if the
9 supervisor participated in or directed the violations, or knew of the violations and failed to
10 act to prevent them.” Taylor, 880 F.2d at 1045.

11 Plaintiff only makes conclusory assertions that Kyle violated his constitutional rights
12 by failing to address his complaints about exposure to ETS/STS. Plaintiff alleges no facts
13 to support that Kyle personally participated in or promulgated or endorsed a policy or
14 practice of ignoring exposure to ETS/STS in the CSATF. Accordingly, Dr. Kyle will be
15 dismissed.

16 C. Grievance Procedure

17 Plaintiff repeatedly alleges that various Defendants failed to respond to his grievances
18 thereby denying him access to the prison grievance process. There is no free-standing
19 constitutional right to a grievance process because inmates do not have a protected liberty
20 interest in prison grievance procedures. Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988);
21 Antonelli v. Sheahan, 81 F.3d 1422, 1430 (7th Cir. 1996); see also Adams v. Rice, 40 F.3d
22 72, 75 (4th Cir. 1994); Buckley v. Barlow, 997 F.2d 494, 493 (8th Cir. 1993) (*per curiam*).
23 Therefore, Plaintiff fails to state a claim based upon any Defendant’s failure to respond to
24 his grievances.

25 D. Retaliation

26 Plaintiff alleges Defendants retaliated against him by failing to grant his grievances
27 regarding exposure to ETS/STS and failure to transfer him. To state a viable constitutional
28 claim for retaliation, a plaintiff must allege that a defendant acting under color of state law

1 took adverse action against him because he engaged in protected conduct, that the adverse
2 action was not narrowly tailored to advance legitimate correctional goals, and that the
3 adverse action chilled the plaintiff's exercise of his First Amendment rights or caused the
4 prisoner to suffer more than minimal harm. Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th
5 Cir. 2005); see also Hines v. Gomez, 108 F.3d 265, 267 (9th Cir. 1997) (retaliation claims
6 require that an inmate show (1) that the prison official acted in retaliation for the exercise of
7 a constitutionally-protected right, and (2) that the action "advanced no legitimate penological
8 interest").

9 Plaintiff asserts that Depner retaliated against him by failing to respond to his
10 complaints regarding ETS/STS. Plaintiff fails, however, to allege facts to support his claim
11 that Depner's acts or omissions were retaliatory. Indeed, Plaintiff states that Depner
12 informed him that he lacked the ability to transfer Plaintiff to alternative housing. Plaintiff
13 otherwise fails to allege facts to support that his First Amendment rights were chilled;
14 Plaintiff alleges that he continued to file grievances and to appeal the denial of his
15 grievances. Because Plaintiff fails to identify any retaliatory adverse action taken by Depner
16 or to allege facts to support that Plaintiff's First Amendment rights were chilled, Plaintiff
17 fails to state a claim for retaliation against Depner.

18 Plaintiff also alleges that while he was in administrative segregation, Doe Defendants
19 acted in concert with Rawers, Cuttillo, and Depner to deny him yard time, showers,
20 visitation, law library visits, personal property, cleaning supplies, and clean clothing in
21 retaliation for seeking redress of grievances. These allegations are conclusory and fail to
22 identify when, how, by whom, and the extent to which he was so denied. Plaintiff therefore
23 fails to state a claim on this basis.

24 Plaintiff also fails to set forth facts to support his claim that he was placed in
25 administrative segregation in retaliation for filing grievances. Rather, Plaintiff alleges that
26 he was transferred to administrative segregation when he reported being verbally threatened
27 and he was unable to identify the inmates threatening him. The facts alleged support that
28 Plaintiff was moved to administrative segregation for his safety rather than in retaliation.

1 Accordingly, these allegations are dismissed.

2 **E. Threats to Safety**

3 Plaintiff asserts that acts by prison staff constituted unconstitutional threats to his
4 safety. Prison officials are required to take reasonable measures to guarantee the safety of
5 inmates and officials have a duty to protect prisoners from violence at the hands of other
6 prisoners. Farmer v. Brennan, 511 U.S. 825, 832-33 (1994); Frost v. Agnos, 152 F.3d 1124,
7 1128 (9th Cir. 1998). To state a claim for threats to safety, an inmate must allege facts to
8 support that he was incarcerated under conditions posing a substantial risk of harm and that
9 prison officials were “deliberately indifferent” to his safety. Farmer, 511 U.S. at 834; Frost,
10 152 F.3d at 1128; Redman v. County of Los Angeles, 942 F.2d 1435, 1443 (9th Cir. 1991)
11 (*en banc*). To adequately allege deliberate indifference, a plaintiff must set forth facts to
12 support that a defendant knew of, but disregarded, an excessive risk to inmate safety.
13 Farmer, 511 U.S. at 837. This means that “the official must both [have been] aware of facts
14 from which the inference could be drawn that a substantial risk of serious harm exist[ed], and
15 he must also [have] draw[n] the inference.” Farmer, 511 U.S. at 837; Frost, 152 F.3d at
16 1128; Redman, 942 F.2d at 1442.

17 Plaintiff in part alleges that unidentified correction officers “told certain inmates” that
18 he was complaining about smoking in the housing units, which he contends was tantamount
19 to condoning an attack on him. (Doc.# 7 at 15.) This allegation is conclusory and vague and
20 Plaintiff fails to connect this allegation to any named Defendant. Accordingly, it is
21 dismissed.

22 Plaintiff also alleges that after his mother called Warden Rawers regarding threats
23 being made against him by inmates for complaining about exposure to ETS/STS, Rawers
24 called a housing officer and told the officer to have an inmate find out who was threatening
25 Plaintiff. The unidentified inmate instead informed other inmates that Plaintiff was grieving
26 the ETS/STS, resulting in additional verbal threats against Plaintiff. On this basis, Plaintiff
27 contends that Rawers and the housing officer “acted in concert” to cause immediate and
28 future harm to Plaintiff. Plaintiff then spoke with Captain Cuttillo, who moved Plaintiff to

1 administrative segregation based upon his report of verbal threats against him.

2 The facts alleged by Plaintiff are not sufficient to support an inference that Rawers
3 conspired with the housing officer to create a substantial risk of serious harm. Moreover,
4 after Plaintiff complained about the verbal threats, Cuttillo moved him to administrative
5 segregation, where he remained until his transfer to CSATF and Plaintiff does not allege that
6 he ever suffered an assault by other inmates. Plaintiff fails to allege sufficient facts to
7 support that Rawers, the housing officer, or Cuttillo acted with deliberate indifference to
8 threats to his safety.

9 **F. Medical Care**

10 Plaintiff in part alleges that he received constitutionally deficient medical care. To
11 state a claim for denial of constitutionally adequate medical care, a plaintiff must allege facts
12 to support that he has or had a serious medical need and that a particular defendant acted with
13 deliberate indifference to that need. See Estelle v. Gamble, 429 U.S. 97, 104-05 (1976); Lolli
14 v. County of Orange, 351 F.3d 410, 418-19 (9th Cir. 2003). To allege a serious medical
15 need, a plaintiff must set forth facts to support that the “failure to treat a prisoner’s condition
16 could result in further significant injury or the ‘unnecessary and wanton infliction of pain.’”
17 Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting McGuckin v. Smith, 974 F.2d
18 1050, 1059 (9th Cir. 1991). A plaintiff must also allege facts to support that a defendant was
19 deliberately indifferent to a serious medical need. “Deliberate indifference is a high legal
20 standard.” Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004). Deliberate indifference
21 may occur if “prison officials deny, delay or intentionally interfere with medical treatment.”
22 Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir.1988). Mere negligence, however,
23 “in diagnosing or treating a medical condition, without more, does not violate a prisoner’s
24 Eighth Amendment rights.” Lopez, 203 F.3d at 1131 (quoting Hutchinson, 838 F.2d at 394).
25 Furthermore, a delay in receiving medical care, without more, is insufficient to state a claim
26 against a jailor for deliberate indifference unless the plaintiff can show that the delay in
27 treatment harmed him. Shapley v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407
28 (9th Cir. 1985). A difference in medical opinion also does not amount to deliberate

1 indifference. See Toguchi, 391 F.3d at 1058. Rather, to prevail on a claim involving choices
2 between alternative courses of treatment, a prisoner must show that the chosen course was
3 medically unacceptable under the circumstances and was chosen in conscious disregard of
4 an excessive risk to the prisoner’s health. Id. Similarly, differences in judgment between an
5 inmate and prison medical personnel regarding appropriate medical diagnosis or treatment
6 are not enough to state a deliberate indifference claim. Sanchez v. Vild, 891 F.2d 240, 242
7 (9th Cir. 1989).

8 Plaintiff alleges that Dr. Nguyen only prescribed seven days of antibiotics for his
9 swollen lymph gland and refused to refer Plaintiff to an outside specialist regarding the
10 condition. Although Plaintiff was subsequently diagnosed with cancer, Plaintiff’s
11 disagreement with the treatment provided by Dr. Nguyen is not sufficient to state a claim for
12 deliberate indifference to his medical needs.

13 Plaintiff also asserts that Alamieda, Woodford, Rawers, Cuttillo, Adams, Lais, Kyle,
14 Nguyen, and Depner “approved, allowed, acted in concert or tacitly authorized their
15 subordinate employees to purposefully deny, delay, ignore, or intentionally interfere with
16 plaintiff’s serious medical needs that recklessly caused him to suffer future harm, lung cancer
17 that is continuously matacitly [sic] moving.” (Doc.# 7 at 9, 13.) Plaintiff wholly fails to set
18 forth facts to support that any of the Defendants in any way caused a delay or denial of
19 medical care. He makes only conclusory assertions, which are not sufficient to state a claim.

20 **G. State Law Claims**

21 Plaintiff alleges that he filed two government claims for state tort violations for pain
22 and suffering, negligence, and medical malpractice. (Doc.# 7 at 10.) He also alleges “the
23 torts of negligence, medical malpractice and I.I.E.D. against the State of California, County
24 of Corcoran, Fresno, and all defendant employees named in this action including Does 1-10
25 in violation of his constitutional rights.” (Id. at 7.) The State of California and Corcoran and
26 Fresno counties are not named as Defendants. Further, Plaintiff sets forth no facts in support
27 of any state law claims, but only sets forth facts in support of his federal claims. (Id.)
28 Accordingly, there are no state law claims before the Court over which to exercise

1 supplemental jurisdiction.

2 **IV. Claims for Which an Answer Will be Required**

3 Plaintiff alleges that Woodford, Adams, and Dr. Nguyen failed to provide him with
4 an adequate supply of medication upon parole for a period reasonably necessary to enable
5 him to consult with a doctor and obtain a new supply. See Wakefield, 177 F.3d at 1164 (an
6 outgoing prisoner who is receiving and continues to require medication must be provided
7 with a supply to ensure that he has that medication available during the period of time
8 reasonably necessary to permit him to consult a doctor and obtain a new supply); see also
9 Lugo v. Senkowski, 114 F. Supp.2d 111, 115 (N.D. N.Y. 2000). Plaintiff sufficiently states
10 a claim against them on this basis. Response is required.

11 Plaintiff also alleges that he was daily exposed to ETS/STS throughout his
12 confinement at ATS, including administrative segregation, and CSATF, resulting in
13 contemporaneous and future illnesses that compromised his health and life. Plaintiff alleges
14 that, through the filing of numerous grievances, complaints, and appeals up to the directors'
15 level regarding ETS/STS, Defendants Alamieda, Woodford, Adams, Cuttillo, Depner, and
16 Lais knew that inmates were smoking in housing units, but acted with deliberate indifference
17 to the risk of substantial harm resulting therefrom. Plaintiff sufficiently states a claim against
18 these Defendants on that basis and they are required to respond to this claim.

19 **V. Warnings**

20 **A. Address Changes**

21 Plaintiff must file and serve a notice of a change of address in accordance with Rule
22 83-182(f) and 83-183(b) of the Local Rules of Civil Procedure. Plaintiff must not include
23 a motion for other relief with a notice of change of address. Failure to comply may result in
24 dismissal of this action.

25 **B. Copies**

26 Plaintiff must submit an additional copy of every filing for use by the Court. See
27 LRCiv 5-133(d)(2). Failure to comply may result in the filing being stricken without further
28 notice to Plaintiff.

1 **C. Possible Dismissal**

2 If Plaintiff fails to timely comply with every provision of this Order, including these
3 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,
4 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
5 comply with any order of the Court).

6 **IT IS ORDERED:**

7 (1) Plaintiff's claims, except to the extent stated in paragraph 2 below, and
8 Defendants Kyle and Does 1-10 are **dismissed** without prejudice. (Doc.# 7.)

9 (2) Defendants Alamedia, Woodford, Rawers, Adams, Cuttillo, Depner, Lais, and
10 Nguyen must answer Plaintiff's claims for deliberate indifference to his serious medical
11 needs based on the failure to provide medication upon parole and regarding exposure to
12 environmental and secondhand smoke while an inmate at Avenal State Prison and the
13 Corcoran Substance Abuse Treatment Facility.

14 (3) The Clerk of Court is directed to send Plaintiff a service packet including the
15 First Amended Complaint (Doc.# 7), this Order, a Notice of Submission of Documents form,
16 an instruction sheet, and copies of summons and USM-285 forms for Defendants Alamedia,
17 Woodford, Rawers, Adams, Cuttillo, Depner, Lais, and Nguyen.

18 (4) Within **30 days** of the date of filing of this Order, Plaintiff must complete and
19 return to the Clerk of Court the Notice of Submission of Documents. Plaintiff must submit
20 with the Notice of Submission of Documents: a copy of the First Amended Complaint for
21 each Defendant, a copy of this Order for each Defendant, a completed summons for each
22 Defendant, and a completed USM-285 for each Defendant.

23 (5) Plaintiff must not attempt service on Defendants and must not request waiver
24 of service. Once the Clerk of Court has received the Notice of Submission of Documents and
25 the required documents, the Court will direct the United States Marshal to seek waiver of
26 service from each Defendant or serve each Defendant.

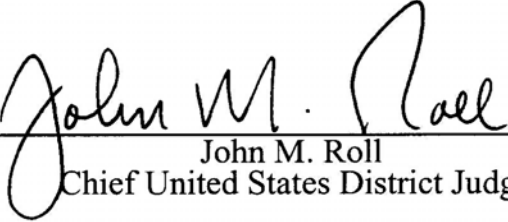
27 (6) **If Plaintiff fails to return the Notice of Submission of Documents and the**
28 **required documents within 30 days of the date of filing of this Order, the Clerk of Court**

1 **must, without further notice, enter a judgment of dismissal of this action without**
2 **prejudice. See Fed. R. Civ. P. 41(b).**

3 (7) The Clerk of Court must note on the docket for this case the addition of
4 Depner and Nguyen as Defendants.

5 DATED this 14th day of April, 2009.

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John M. Roll
Chief United States District Judge