

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

AMETHEUS TAYLOR,

CASE NO. 1:08-cv-01578-SMS PC

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH  
LEAVE TO FILE AMENDED COMPLAINT  
WITHIN THIRTY DAYS

v.

DR. J. ST. CLAIR, et al.,

(Doc. 1)

Defendants.

**Screening Order**

**I. Screening Requirement**

Plaintiff Ametheus Taylor ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on October 1, 2008.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

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1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.  
3 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and  
4 plain statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a).  
5 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the  
6 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading  
7 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330  
8 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements  
9 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257  
10 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

## 11 **II. Plaintiff’s Eighth Amendment Medical Care Claims**

12 Plaintiff is currently housed at the Sierra Conservation Center (“SCC”), where the events  
13 giving rise to the claims at issue in this action allegedly occurred. Plaintiff alleges a violation of the  
14 Eighth Amendment of the United States Constitution stemming from prison officials’ failure to  
15 provide him with adequate and timely medical treatment for his knee. Defendants St. Clair, Howard,  
16 Lovett, and Smith are physicians who saw Plaintiff for his knee injury. It is unclear what role  
17 Defendant Thomatos played, as there are no allegations against him or her.

18 Plaintiff alleges that he was severely injured on September 9, 2007, working on a fireline,  
19 and was transported to SCC on September 10, 2007, where he was seen by Defendant Howard.  
20 Plaintiff was provided with crutches and “minimal” pain medication. Plaintiff was seen again by  
21 Defendant Howard on September 14, 2007, for complaints of increased pain and an MRI was  
22 authorized on September 15, 2007, which subsequently revealed a fracture, and torn tendons and  
23 ligaments.

24 Plaintiff was seen by Defendant St. Clair on September 26, 2007, and was given bandages  
25 and pain medication during this time period. On October 17, 2007, Defendant St. Clair refused to  
26 order any more pain medication for Plaintiff. Plaintiff’s MRI was conducted on October 25, 2007,  
27 and on November 21, 2007, Plaintiff was evaluated by Defendant St. Clair and given pain  
28 medication again. Plaintiff was authorized to see an orthopedist on November 23, 2007, but was not

1 seen until January 2, 2008. Plaintiff was eventually seen by an orthopedist at UC Davis, who  
2 ordered surgery, which was conducted on July 16, 2008. Plaintiff alleges that prison doctors gave  
3 him the run around for over eight months.

4 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
5 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096  
6 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part  
7 test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by  
8 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or  
9 the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need was  
10 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059  
11 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th  
12 Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a  
13 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused  
14 by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060). Where a prisoner is alleging a delay  
15 in receiving medical treatment, the delay must have led to further harm in order for the prisoner to  
16 make a claim of deliberate indifference to serious medical needs. McGuckin at 1060 (citing Shapely  
17 v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985)).

18 Plaintiff has adequately alleged the existence of a serious medical need. However,  
19 [d]eliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir.  
20 2004). “A difference of opinion between a prisoner-patient and prison medical authorities regarding  
21 treatment does not give rise to a s 1983 claim.” Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir.  
22 1981) (internal citation omitted). Although Plaintiff alleges a delay between his injury and the  
23 surgery, Plaintiff’s allegations do not support a claim “that the course of treatment the doctors chose  
24 was medically unacceptable under the circumstances . . . and . . . that they chose this course in  
25 conscious disregard of an excessive risk to [P]laintiff’s health.” Jackson v. McIntosh, 90 F.3d 330,  
26 332 (9th Cir. 1986) (internal citations omitted). The Court will provide Plaintiff with the opportunity  
27 to file an amended complaint. Although Plaintiff’s factual allegations needs not be lengthy, they  
28 must be sufficient to support a claim that each named defendant “[knew] of and disregard[ed] an

1 *excessive* risk to [Plaintiff's] health or safety.” Farmer v. Brennan, 511 U.S. 825, 837 (1994)  
2 (emphasis added).

3 **III. Conclusion and Order**

4 Plaintiff's complaint fails to state a claim upon which relief may be granted under section  
5 1983. The Court will provide Plaintiff with the opportunity to file an amended complaint curing the  
6 deficiencies identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir.  
7 1987). Plaintiff may not change the nature of this suit by adding new, unrelated claims in his  
8 amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot”  
9 complaints).

10 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each  
11 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights,  
12 Hydrick, 500 F.3d at 987-88. Although accepted as true, the “[f]actual allegations must be  
13 [sufficient] to raise a right to relief above the speculative level . . . .” Bell Atlantic Corp. v.  
14 Twombly, 127 S.Ct. 1955, 1965 (2007) (citations omitted).

15 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,  
16 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567  
17 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded  
18 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an original  
19 complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d at 567 (citing  
20 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at  
21 1474.

22 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 23 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim;
- 24 2. The Clerk's Office shall send Plaintiff a complaint form;
- 25 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
26 amended complaint;

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4. Plaintiff may not add any new, unrelated claims to this action via his amended complaint and any attempt to do so will result in an order striking the amended complaint; and

5. If Plaintiff fails to file an amended complaint, the Court will recommend that this action be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

**Dated: February 6, 2009**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE