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7 **UNITED STATES DISTRICT COURT**  
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910 EASTERN DISTRICT OF CALIFORNIA  
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1213 DARRELL LOWE, CASE NO. 1:09-cv-00712-DLB PC  
14 Plaintiff, ORDER DISMISSING CERTAIN CLAIMS  
15 v. AND DEFENDANTS  
16 WILLIAM J. MCGUINNESS, et al., (Doc. 1)  
17 Defendants.  
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2021 **Order Following Screening**  
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23 Plaintiff Darrell Lowe (“Plaintiff”) is a prisoner in the custody of the California  
24 Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in  
25 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On April 22, 2009,  
26 Plaintiff filed his complaint which initiated this action. (Doc. 1.) On September 28, 2009, the  
27 Court screened Plaintiff’s complaint and found that it stated a cognizable claim against  
28 Defendants Rahimifar, McGuinness, and Call for violation of the Eighth Amendment. The Court  
also found that Plaintiff’s claims against Defendant Morrison are unrelated to the claims against  
the other defendants and may not proceed in this action. Plaintiff also failed to state any other  
cognizable claims. Plaintiff was provided the opportunity to either file an amended complaint  
curing the deficiencies identified, or to proceed only on the claims found to be cognizable. On  
October 13, 2009, Plaintiff notified the Court that he wished to proceed only against Defendants  
Rahimifar, McGuinness, and Call. Accordingly, the Court issues the following order.  
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1    **I.    Screening Requirement**

2        The Court is required to screen complaints brought by prisoners seeking relief against a  
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
4 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
5 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or  
6 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
7 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been  
8 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
9 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §  
10 1915(e)(2)(B)(ii).

11        A complaint must contain “a short and plain statement of the claim showing that the  
12 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
13 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
14 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing  
15 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must  
16 set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its  
17 face.’” *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). While factual allegations  
18 are accepted as true, legal conclusions are not. *Id.* at 1949.

19    **II.    Summary of Plaintiff’s Complaint**

20        Plaintiff is housed at Kern Valley State Prison in Delano, California. The events giving  
21 rise to this action allegedly occurred at California State Prison - Corcoran (“CSP-Corcoran”).  
22 Plaintiff names Chief Medical Officer William McGuinness, Registered Nurse Mary Call,  
23 Warden Derral G. Adams, Sergeant Anthony Morrison and Dr. Majid Rahimifar as defendants.

24        **A.    Medical Care Claim**

25            **1.    Defendants Rahimifar and McGuinness**

26        Plaintiff identifies defendant Rahimifar as a neurosurgeon contracted with CSP-Corcoran.  
27 Plaintiff alleges that on February 28, 2006 defendant Rahimifar prescribed epidural shots for  
28 Plaintiff to alleviate his pain. Plaintiff states that the treatment required the approval of defendant

1 McGuinness, who did not approve the treatment.

2 Plaintiff states that on June 22, 2006 plaintiff underwent surgery for degenerative disc  
3 disease. On November 21, 2006, defendant Rahimifar observed a displaced cage and ordered  
4 Plaintiff to return so that defendant could correct the procedure. Plaintiff alleges that defendant  
5 McGuinness refused to approve the follow-up, causing Plaintiff severe pain and leaving him  
6 partially disabled.

7 Plaintiff states that he underwent a second surgery on April 30, 2007 ,and was discharged  
8 on May 2, 2007. Plaintiff Plaintiff states that he was ordered to stay in bed for four months.  
9 Plaintiff alleges that defendant McGuinness failed to approve the order, causing Plaintiff to  
10 suffer further pain. Plaintiff alleges that on May 2, 2007, defendant McGuinness also failed to  
11 order or approve further treatment for plaintiff.

12 Further in the complaint, Plaintiff alleges that defendant Rahimifar deliberately left a  
13 screw loose during Plaintiff's surgery in order to necessitate a second surgery, in order for  
14 defendant Rahimifar to receive further work and payment.

15 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an  
16 inmate must show ‘deliberate indifference to serious medical needs.’” *Jett v. Penner*, 439 F.3d  
17 1091, 1096 (9th Cir. 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 295 (1976)).  
18 The two part test for deliberate indifference requires the plaintiff to show (1) “a serious medical  
19 need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further  
20 significant injury or the unnecessary and wanton infliction of pain,’” and (2) “the defendant’s  
21 response to the need was deliberately indifferent.” *Jett*, 439 F.3d at 1096 (quoting *McGuckin v.*  
22 *Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds by WMX Techs., Inc. v.*  
23 *Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate  
24 indifference is shown by “a purposeful act or failure to respond to a prisoner’s pain or possible  
25 medical need, and harm caused by the indifference.” *Id.* (citing *McGuckin*, 974 F.2d at 1060).

26 With respect to defendant Rahimifar, Plaintiff's allegations that defendant Rahimifar  
27 recommended and prescribed treatment for Plaintiff that were not followed through by other  
28 prison officials does not support a claim of deliberate indifference against him. The facts pled

1 suggest that defendant Rahimifar attempted to treat Plaintiff for his medical conditions.  
2 Nevertheless, Plaintiff states a cognizable claim against defendant Rahimifar for violation of the  
3 Eighth Amendment, based on Plaintiff's allegation that defendant deliberately left a screw loose  
4 during Plaintiff's surgery in order to be paid to perform a second surgery.

5 With respect to defendant McGuinness, Plaintiff contends that he failed to approve  
6 treatments recommended by Plaintiff's treating physicians. Plaintiff contends that defendant  
7 McGuinness obstructed and delayed Plaintiff's treatments, causing him severe pain and  
8 unnecessary suffering. Based on Plaintiff's allegations and the minimal pleading standards,  
9 Plaintiff has alleged facts sufficient to state a claim under section 1983 against Defendant  
10 McGuinness. Fed. R. Civ. P. 8(a)(2).

11 **2. Defendant Adams**

12 Plaintiff alleges that defendant Adams is the Warden and denied Plaintiff his rights by  
13 "implementing, maintaining, and tolerating policies, practices and customs which resulted in  
14 illegal and rights violating conduct and proximately causing the injuries to plaintiff." (Doc. 1,  
15 Complaint, p.3E.)

16 Plaintiff's conclusory statements are insufficient to state a claim against defendant  
17 Adams. *Iqbal*, 129 S. Ct. at 1949. In addition, there is no *respondeat superior* liability under  
18 section 1983, and therefore, Plaintiff may not state a claim against Defendant Adams simply  
19 because he holds the position as warden. *Id.* at 1948-49; *Jones v. Williams*, 297 F.3d 930, 934  
20 (9th Cir. 2002); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff's allegations are  
21 not sufficient to give rise to a cognizable claim for relief under section 1983 against Defendant  
22 Adams.

23 **3. Defendant Call**

24 Plaintiff contends that on April 24, 2006, Plaintiff experienced sharp pain and fell to the  
25 ground, unable to move. Plaintiff alleges that defendant Call informed custodial staff to leave  
26 Plaintiff on the ground in his bodily fluids. Plaintiff states that other custody staff transported  
27 Plaintiff to the emergency room.

28 Plaintiff has sufficiently alleged facts to support a claim for violation of the Eighth

1 Amendment against defendant Call for deliberate indifference.

2           **B. Fourteenth Amendment - Equal Protection Clause**

3           Plaintiff alleges without specificity that defendant McGuinness' actions denied Plaintiff  
4 equal benefit of the laws. Plaintiff appears to be alleging discrimination based on disability.

5           The Equal Protection Clause . . . is essentially a direction that all persons similarly  
6 situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432,  
7 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)).   "To state a claim under 42 U.S.C.  
8 § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff  
9 must show that the defendants acted with an intent or purpose to discriminate against the plaintiff  
10 based upon membership in a protected class.'" *Lee v. City of Los Angeles*, 250 F.3d 668, 686  
11 (9th Cir. 2001) (quoting *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)).  
12 "Intentional discrimination means that a defendant acted at least in part *because of* a plaintiff's  
13 protected status." *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003) (quoting *Maynard v.*  
14 *City of San Jose*, 37 F.3d 1396, 1404 (9th Cir. 1994))(emphasis in original).

15           Plaintiff has not alleged any facts that support a claim that defendant McGuinness  
16 intentionally discriminated against him. Conclusory statements of unequal treatment are  
17 insufficient to state a claim. *Iqbal*, 129 S. Ct. at 1949.

18           **C. Claims Against Defendant Morrison**

19           Plaintiff alleges that on July 25, 2007, Plaintiff was beaten by defendant Morrison and  
20 other officers in retaliation for having filed a lawsuit. Plaintiff states that he suffered permanent  
21 back and neck injuries. Plaintiff states that he was charged and subsequently pled guilty in court  
22 and received a two-year sentence for battery on a peace officer.

23           Plaintiff may not proceed in one action on a myriad of unrelated claims against different  
24 staff members. "The controlling principle appears in Fed. R. Civ. P. 18(a): 'A party asserting a  
25 claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join,  
26 either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the  
27 party has against an opposing party.' Thus multiple claims against a single party are fine, but  
28 Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2.

1 Unrelated claims against different defendants belong in different suits, not only to prevent the  
2 sort of morass [a multiple claim, multiple defendant] suit produce[s], but also to ensure that  
3 prisoners pay the required filing fees-for the Prison Litigation Reform Act limits to 3 the number  
4 of frivolous suits or appeals that any prisoner may file without prepayment of the required fees.  
5 28 U.S.C. § 1915(g)." *George v. Smith*, 507 F.3d 605, 609 (7th Cir. 2007).

6 Plaintiff's attempt to include claims against defendant Morrison for use of excessive force  
7 and for retaliation is improper. The allegations appear unrelated to Plaintiff's claim of deliberate  
8 indifference to his serious medical needs, as pled against the other defendants. Plaintiff may not  
9 proceed with his unrelated claims against defendant Morrison in this action.

10 **D. State Law Negligence Claim**

11 Plaintiff alleges that defendants have acted negligently. California's Tort Claims Act  
12 requires that a tort claim against a public entity or its employees be presented to the California  
13 Victim Compensation and Government Claims Board, formerly known as the State Board of  
14 Control, no more than six months after the cause of action accrues. Cal. Gov't Code §§ 905.2,  
15 910, 911.2, 945.4, 950-950.2 (West 2009). Presentation of a written claim, and action on or  
16 rejection of the claim are conditions precedent to suit. *State v. Superior Court of Kings County*  
17 (*Bodde*), 32 Cal.4th 1234, 1245, 90 P.3d 116, 124, 13 Cal.Rptr.3d 534, 543 (2004); *Mangold v.*  
18 *California Pub. Utils. Comm'n*, 67 F.3d 1470, 1477 (9th Cir. 1995). To state a tort claim against  
19 a public employee, a plaintiff must allege compliance with the Tort Claims Act. *State v.*  
20 *Superior Court*, 32 Cal.4th at 1245, 90 P.3d at 124, 13 Cal.Rptr.3d at 543; *Mangold*, 67 F.3d at  
21 1477; *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 627 (9th Cir. 1988).

22 Plaintiff's complaint contains no allegation of compliance with the California Tort  
23 Claims Act. Compliance with the prison's internal administrative procedure does not constitute  
24 compliance with the Tort Claims Act. Plaintiff fails to state a tort claim.

25 **III. Conclusion and Order**

26 Plaintiff's complaint states a claim under section 1983 against Defendants Rahimifar,  
27 McGuinness and Call for violation of the Eighth Amendment, but fails to state a claim against  
28 Defendants Adams. Plaintiff's claims against defendant Morrison are unrelated to the claims

1 against the other defendants and Plaintiff may not proceed in this action with those claims.  
2 Finally, Plaintiff has not stated any cognizable state law claims. Plaintiff was provided with the  
3 opportunity to file an amended complaint to cure the deficiencies identified, but Plaintiff notified  
4 the Court that he wished to proceed only on the claims found to be cognizable.

5 Based on the foregoing, it is HEREBY ORDERED that:

- 6 1) Defendant Morrison is dismissed from this action without prejudice for non-  
7 compliance with Federal Rule of Civil Procedure 18(a);
- 8 2) Plaintiff's Equal Protection and state law claims are dismissed for failure to state a  
9 claim upon which relief may be granted;
- 10 3) Defendant Adams is dismissed for failure to state a claim upon which relief may  
11 be granted; and
- 12 4) This action proceed against Defendants Rahimifar, McGuinness and Call for  
13 violation of the Eighth Amendment.

14 IT IS SO ORDERED.

15 **Dated: June 7, 2010**

16 **/s/ Dennis L. Beck**  
17 **UNITED STATES MAGISTRATE JUDGE**

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