

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

STEVEN WOODS,

Plaintiff,

v.

KELLY HARRINGTON, et al.,

Defendants.

) CASE NO. 1:09-cv-02007 GSA PC

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

) (Doc. 1)

**Screening Order**

**I. Screening Requirement**

Plaintiff is a state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1).

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).

Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited exceptions,” none of which applies to § 1983 actions. Swierkiewicz v. Sorema, N.A., 534 U.S. 506 (512) (2002). Pursuant to Rule 8(a), a complaint must contain “a short and plain statement of the claim showing

1 that the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a). “Such a statement must simply give  
2 defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”  
3 Swierkewicz, 534 U.S. at 512. Detailed factual allegations are not required, but “[t]hreadbare  
4 recitals of the elements of the cause of action, supported by mere conclusory statements, do not  
5 suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009), citing Bell Atlantic Corp. v. Twombly, 550  
6 U.S. 544, 555 (2007). “Plaintiff must set forth sufficient factual matter accepted as true, to ‘state a  
7 claim that is plausible on its face.’” Iqbal, 129 S.Ct. at 1949, quoting Twombly, 550 U.S. at 555.  
8 While factual allegations are accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

9 Although accepted as true, “[f]actual allegations must be [sufficient] to raise a right to relief  
10 above the speculative level.” Twombly, 550 U.S. at 555 (citations omitted). A plaintiff must set  
11 forth “the grounds of his entitlement to relief,” which “requires more than labels and conclusions,  
12 and a formulaic recitation of the elements of a cause of action.” Id. at 555-56 (internal quotation  
13 marks and citations omitted). To adequately state a claim against a defendant, a plaintiff must set  
14 forth the legal and factual basis for his claim.

## 15 **II. Plaintiff’s Claims**

16 Plaintiff, currently in the custody of the California Department of Corrections and  
17 Rehabilitation at Kern Valley State Prison (KVSP), names the following individual defendants:  
18 Kelly Harrington, Warden at KVSP; Dr. Sherry Lopez, Chief Medical Officer at KVSP; William  
19 McGuiness, Chief Medical Officer at Corcoran State Prison; Douglas Peterson, Chief Medical  
20 Officer at Folsom State Prison, M. McArthur, M.D., a physician at Folsom State Prison.

21 In August of 2003, Plaintiff was diagnosed with Hepatitis C. The diagnosis was made after  
22 blood tests and a liver biopsy. Plaintiff was advised that his infection was stage 1 or stage 2.  
23 (Compl. ¶¶ 13, 14.) Plaintiff sought treatment at Folsom State Prison, where he was housed at the  
24 time.

25 Plaintiff was eventually denied the treatment he sought. Plaintiff filed an inmate grievance,  
26 which upheld the denial on the ground that “stage 1 or 2 Hepatitis C, with clinically verifiable liver  
27 tissue damage, does not meet the criteria for inclusion in the Hepatitis C combination treatment  
28 program.” (Compl. ¶ 19.) Plaintiff was advised that he was “then receiving medical care in

1 accordance with Department standards.” Id.

2 On December 2, 2007, Plaintiff filed a second inmate grievance while house at CSP  
3 Corcoran. Plaintiff filed his grievance, “functionally alleging the same issues as above, but including  
4 hard data on viral load and liver enzymes.” (Compl. ¶ 20.) The appeal was partially granted at the  
5 second level, directing that Plaintiff be given a biopsy. The second level response also advised  
6 Plaintiff that “only licensed healthcare providers may mandate treatment in accordance with outcome  
7 based data, and supported by diagnostic information.” (Compl. ¶ 22.) On April 1, 2008, Plaintiff  
8 was transferred to Kern Valley State Prison, where he is now housed.

9 Plaintiff alleges that the treatment he sought was denied, despite the fact that tests indicated  
10 he suffered from liver damage. Plaintiff alleges that a biopsy in March of 2004 indicated “clear,  
11 clinical indication of liver tissue damage,” and an August, 2003 blood test indicated a viral load  
12 “well above anything considered normal.”

13 **A. Venue**

14 Plaintiff names as defendants two physicians employed at Folsom State Prison. Pursuant to  
15 Local Rule 120(d), all civil actions arising in Sacramento County, where Folsom State Prison is  
16 located, shall be filed in the Sacramento Division. As will be explained below, Plaintiff fails to  
17 charge any of the Folsom defendants with any specific conduct. These defendants should therefore  
18 be dismissed. Should Plaintiff desire to proceed against these defendants, he should file a separate  
19 action in the Sacramento divisions.

20 **B. Linkage**

21 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under  
22 color of state law and (2) the defendant deprived him of rights secured by the Constitution or federal  
23 law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). “A person deprives  
24 another of a constitutional right, where that person ‘does an affirmative act, participates in another’s  
25 affirmative acts, or omits to perform an act which [that person] is legally required to do that causes  
26 the deprivation of which complaint is made.’” Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007)  
27 (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite causal connection  
28 can be established not only by some kind of direct, personal participation in the deprivation, but also

1 by setting in motion a series of acts by others which the actor knows or reasonably should know  
2 would cause others to inflict the constitutional injury.” Id. (quoting Johnson at 743-44).

3 Here, Plaintiff fails to charge any of the individual defendants with specific conduct that  
4 caused him injury. Plaintiff may not simply claim that he has been denied adequate medical care,  
5 and then list individual defendants. In order to hold an individual defendant liable, Plaintiff must  
6 name the individual defendant, describe where that defendant is employed and in what capacity, and  
7 explain how that defendant acted under color of state law. Plaintiff should state clearly, in his or  
8 her own words, what happened. Plaintiff must describe what each defendant, *by name*, did to violate  
9 the particular right described by Plaintiff.

### 10 C. Eighth Amendment Medical Care Claim

11 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under  
12 color of state law and (2) the defendant deprived him of rights secured by the Constitution or federal  
13 law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). “A person deprives  
14 another of a constitutional right, where that person ‘does an affirmative act, participates in another’s  
15 affirmative acts, or omits to perform an act which [that person] is legally required to do that causes  
16 the deprivation of which complaint is made.’” Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007)  
17 (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite causal connection  
18 can be established not only by some kind of direct, personal participation in the deprivation, but also  
19 by setting in motion a series of acts by others which the actor knows or reasonably should know  
20 would cause others to inflict the constitutional injury.’” Id. (quoting Johnson at 743-44).

21 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
22 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096  
23 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part  
24 test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by  
25 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or  
26 the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need was  
27 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059  
28 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th

1 Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a  
2 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused  
3 by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060).

4 Plaintiff’s allegations, at most, indicate a disagreement with the assessment that he does not  
5 qualify for inclusion in the Hepatitis C combination treatment program. Neither “[a] difference of  
6 opinion between a prisoner-patient and prison medical authorities regarding treatment does not give  
7 rise to a s 1983 claim,” Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981) (internal citation  
8 omitted), nor a difference of opinion between medical personnel regarding treatment does not  
9 amount to deliberate indifference, Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). That Plaintiff  
10 suffers from liver damage does not subject defendants to liability for their decision not to include  
11 Plaintiff in the Hepatitis C combination treatment program. There are no facts alleged indicating that  
12 Plaintiff was denied treatment. Rather, Plaintiff appears to allege that he disagrees with the  
13 treatment he received. Such an allegation fails to state a claim for relief.

14 **D. Supervisory Liability**

15 Plaintiff names as a defendant the Warden at KVSP, Kelly Harrington. Under section 1983,  
16 Plaintiff must prove that the Defendants holding supervisory positions personally participated in the  
17 deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). There is no  
18 respondeat superior liability, and each defendant is only liable for his or her own misconduct.  
19 Ashcroft v. Iqbal, 129 S.Ct. 1937, 1948-49 (2009). A supervisor may be held liable for the  
20 constitutional violations of his or her subordinates only if he or she “participated in or directed the  
21 violations, or knew of the violations and failed to act to prevent them.” Taylor v. List, 880 F.2d  
22 1040, 1045 (9th Cir. 1989); also Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler  
23 II v. Clark County School Board of Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v.  
24 Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997). Here, Plaintiff alleges no facts indicating that  
25 Warden Harrington “participated in or directed the violations, or knew of the violations and failed  
26 to act to prevent them.” Defendant Harrington should therefore be dismissed.

27 **III. Conclusion and Order**

28 The Court has screened Plaintiff’s complaint and finds that it does not state any claims upon

1 which relief may be granted under section 1983. The Court will provide Plaintiff with the  
2 opportunity to file an amended complaint curing the deficiencies identified by the Court in this order.  
3 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not  
4 change the nature of this suit by adding new, unrelated claims in his amended complaint. George,  
5 507 F.3d at 607 (no “buckshot” complaints).

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

11 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,  
12 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567  
13 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded  
14 pleading,” Local Rule 220. Plaintiff is warned that “[a]ll causes of action alleged in an original  
15 complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d at 567 (citing  
16 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at  
17 1474.

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

- 19 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a claim;
- 20 2. The Clerk’s Office shall send to Plaintiff a complaint form;
- 21 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
22 amended complaint;
- 23 4. Plaintiff may not add any new, unrelated claims to this action via his amended  
24 complaint and any attempt to do so will result in an order striking the amended  
25 complaint; and
- 26 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this  
27 action be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Dated: November 3, 2010

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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