

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 Claims**

12 Plaintiff, currently in the custody of the CDCR at High Desert State Prison, brings this civil
13 rights action against the Warden at Kern Valley State Prison, as well as an un-named dentist at the
14 Family Western Dental Clinic in Bakersfield. Plaintiff claims that Defendants were deliberately
15 indifferent to his serious dental needs, in violation of the Eighth Amendment.

16 On December 21, 2009, while Plaintiff was housed at Kern Valley State Prison, Dr. Hashem
17 referred Plaintiff to an outside specialist in order to have 2 wisdom teeth removed. Plaintiff alleges
18 that, although he was not in pain, he had his wisdom teeth extracted. Plaintiff alleges that as a result
19 of the extraction, he suffered from nerve damage, and continues to suffer numbness in his chin.

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

1 would cause others to inflict the constitutional injury.” Id. (quoting Johnson at 743-44).

2 **A. Eighth Amendment Medical Care Claim**

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

17 Here, Plaintiff has alleged facts indicating negligence. Plaintiff has alleged that a routine
18 tooth extraction resulted in nerve damage and permanent numbness in his chin. Plaintiff’s
19 allegations sound in negligence. Before it can be said that a prisoner’s civil rights have been
20 abridged with regard to medical care, however, “the indifference to his medical needs must be
21 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause
22 of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir.1980) (citing Estelle, 429
23 U.S. at 105-06). See also Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir.2004). Plaintiff must
24 allege facts indicating that each of the named defendants knew of and disregarded a serious risk to
25 Plaintiff’s health. A bare allegation that there were complications from the tooth extraction, with
26 nothing more, fails to state a claim for relief.

27 Further, Plaintiff fails to identify the oral surgeon. Because Plaintiff is proceeding in forma
28 pauperis, the Court must appoint the United States Marshal to serve each defendant with a summons

1 and complaint. Fed. R. Civ. Pro. 4(c)(2). However, the Marshal cannot locate and serve unidentified
2 defendants.

3 As to Defendant Warden Hedgpeth, liability may be imposed on supervisory defendants
4 under § 1983 only if (1) the supervisor personally participated in the deprivation of constitutional
5 rights or (2) the supervisor knew of the violations and failed to act to prevent them. Hansen v.
6 Black, 885 F.2d 642, 646 (9th Cir. 1989); Taylor v. Lst, 880 F.2d 1040, 1045 (9th Cir. 1989).
7 Plaintiff does not allege facts indicating that the Warden Hedgpeth participated in, or knew of and
8 failed to prevent, the alleged wrongs.

9 **III. Conclusion and Order**

10 The Court has screened Plaintiff's complaint and finds that it does not state any claims upon
11 which relief may be granted under section 1983. The Court will provide Plaintiff with the
12 opportunity to file an amended complaint curing the deficiencies identified by the Court in this order.
13 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not
14 change the nature of this suit by adding new, unrelated claims in his amended complaint. George,
15 507 F.3d at 607 (no "buckshot" complaints).

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

21 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
22 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
23 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded
24 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an original
25 complaint which are not alleged in an amended complaint are waived." King, 814 F.2d at 567 (citing
26 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at
27 1474.

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

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1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim;
2. The Clerk's Office shall send to Plaintiff a complaint form;
3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an amended complaint;
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: November 18, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE