

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

TYRONE CLATION,

CASE NO. 1:12-cv-01974 GSA PC

Plaintiff,

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

v.

KIM HOLLAND, et al.,

(ECF No. 1)

Defendants.  
\_\_\_\_\_/**Screening Order****I. Screening Requirement**

Plaintiff is a Kern County Jail inmate proceeding pro se and in forma pauperis in this 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).

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 Claims**

12 The complaint in this action consists of two pages of a form complaint, along with  
13 approximately 50 pages of exhibits, which appear to be copies of CDCR documents and  
14 correspondence between Plaintiff and the California Attorney General’s Office regarding complaints  
15 about peace officer misconduct. The form complaint submitted by Plaintiff fails to allege any facts,  
16 and the Court can not discern any legal claims.

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

27 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to  
28 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where

1 that defendant is employed and in what capacity, and explain how that defendant acted under color  
2 of state law. Plaintiff should state clearly, in his or her own words, what happened. Plaintiff must  
3 describe what each defendant, *by name*, did to violate the particular right described by Plaintiff.  
4 Plaintiff has failed to do so here.

5 **III. Conclusion and Order**

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

12 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each  
13 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights,  
14 Hydrick, 500 F.3d at 987-88. Although accepted as true, the "[f]actual allegations must be  
15 [sufficient] to raise a right to relief above the speculative level . . . ." Bell Atlantic Corp. v.  
16 Twombly, 550 U.S. 544, 554 (2007) (citations omitted).

17 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,  
18 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567  
19 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded  
20 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an original  
21 complaint which are not alleged in an amended complaint are waived." King, 814 F.2d at 567 (citing  
22 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at  
23 1474.

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

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

IT IS SO ORDERED.

**Dated: April 19, 2013**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE