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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ERIC PRIMAS,

Plaintiff,

vs.

DR. SARKIES, et al.,

Defendants

Case No. 1:13 cv 00444 GSA PC

ORDER DISMISSING COMPLAINT AND  
GRANTING PLAINTIFF LEAVE TO FILE  
AN AMENDED COMPLAINT

AMENDED COMPLAINT DUE  
IN THIRTY DAYS

**I. Screening Requirement**

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 has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).<sup>1</sup>

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

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<sup>1</sup> Plaintiff filed a consent to proceed before a magistrate judge on April 2, 2013 (ECF No. 5).

1 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §  
2 1915(e)(2)(B)(ii).

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
4 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534  
5 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a  
6 short and plain statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R.  
7 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s  
8 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the  
9 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,  
10 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not  
11 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union  
12 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268  
13 (9th Cir. 1982)).

## 14 **II. Plaintiff’s Claims**

15 Plaintiff is an inmate in the custody of the California Department of Corrections and  
16 Rehabilitation at Valley State Prison in Chowchilla. Plaintiff brings this civil rights action  
17 against the following individuals and Defendants: San Joaquin Community Hospital; Coalinga  
18 Regional Medical Hospital; Dr. Nadim Sarkies; Dr. Michael Freedman; Dr. Matab Singh; Dr.  
19 Casabar; Lorell Hedberg; John Does 1 through 6. The events at issue in this lawsuit occurred  
20 while Plaintiff was housed at Pleasant Valley State Prison.

21 Plaintiff alleges that on August 5, 2012, he suffered major facial injuries when he was  
22 struck by a softball. Plaintiff was transferred to Coalinga Regional Medical Center for treatment.  
23 Plaintiff was admitted by John Doe 2. John Doe 3 was the physician who initially examined  
24 Plaintiff. John Doe 4 inserted an intravenous (IV) needle into Plaintiff’s left arm. Once the  
25 needle was inserted, Plaintiff “immediately felt severe pain and advised John Doe #4 of his  
26 discomfort, and that his arm felt like it was on fire. John Doe #4 did not readjust the I.V. needle.  
27

1 As a result of John Doe #4 action caused Plaintiff's arm to swell the size of a football, in the area  
2 of the injection of the I.V." (Compl. p. A2.)

3 While the IV was still in his arm, Plaintiff was transferred to San Joaquin Community  
4 Hospital. Upon arrival at San Joaquin, Plaintiff complained to Dr. Sarkies, Dr. Freeman, Dr.  
5 Singh, Dr. Casabar, Lorell Hedberg and Johns Does 3, 5 and 6 about the pain at the injection site.  
6 Plaintiff alleges that no matter how much he complained about the pain, no medical attention  
7 was given. Plaintiff alleges that as a result of the lack of medical attention, he suffers from deep  
8 vein thrombosis, a condition that he did not have prior to August 5, 2012. Plaintiff alleges that  
9 he now has blood clots, and has to take blood thinners in order to prevent a stroke or heart attack.  
10 Plaintiff alleges that he is now a high risk medical inmate due to Defendants' conduct.

11 **A. Medical Care**

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



1 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite  
2 causal connection can be established not only by some kind of direct, personal participation in  
3 the deprivation, but also by setting in motion a series of acts by others which the actor knows or  
4 reasonably should know would cause others to inflict the constitutional injury.’” Id. (quoting  
5 Johnson at 743-44). Plaintiff has not specifically charged each defendant with conduct  
6 indicating that they knew of and disregarded a serious risk to Plaintiff’s health, resulting in injury  
7 to Plaintiff. Plaintiff may not hold defendants liable simply by alleging a serious medical  
8 condition and then charge defendants with the vague allegation that they neglected his condition.  
9 Here, Plaintiff lists defendants and asserts a conclusory allegation that they were deliberately  
10 indifferent to his condition. Plaintiff must allege facts indicating that each defendant was aware  
11 of a specific harm to Plaintiff, and acted with deliberate indifference to that harm. Plaintiff has  
12 failed to do so here. The complaint should therefore be dismissed. Plaintiff will, however, be  
13 granted leave to file an amended complaint.

14 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to  
15 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where  
16 that defendant is employed and in what capacity, and explain how that defendant acted under  
17 color of state law. Plaintiff should state clearly, in his or her own words, what happened.  
18 Plaintiff must describe what each defendant, *by name*, did to violate the particular right described  
19 by Plaintiff. Plaintiff has failed to do so here.

### 20 **III. Conclusion and Order**

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

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

6 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,  
7 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,  
8 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded  
9 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an  
10 original complaint which are not alleged in an amended complaint are waived." King, 814 F.2d  
11 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord  
12 Forsyth, 114 F.3d at 1474.

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

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

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IT IS SO ORDERED.

Dated: February 5, 2014

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE