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2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF CALIFORNIA  
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7 JASON PATTEN,

8 Plaintiff,

9 vs.

10 R. ATIENZA, et al.,

11 Defendants  
12

Case No. 1:13 cv 01289 GSA PC

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

AMENDED COMPLAINT DUE  
IN THIRTY DAYS

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14 **I. Screening Requirement**

15 Plaintiff is a former state prisoner proceeding pro se and in forma pauperis in this civil  
16 rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge  
17 jurisdiction pursuant to 28 U.S.C. § 636(c).<sup>1</sup>

18 The Court is required to screen complaints brought by prisoners seeking relief against a  
19 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
20 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
21 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or  
22 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
23 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been  
24 paid, the court shall dismiss the case at any time if the court determines that . . . the action or  
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28 <sup>1</sup> Plaintiff filed a consent to proceed before a magistrate judge on September 3, 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, formerly an inmate in the custody of the California Department of Corrections  
16 and Rehabilitation (CDCR) at Avenal State Prison, brings this civil rights action against  
17 defendant CDCR officials employed by the CDCR at Avenal. Plaintiff names the following  
18 individuals: R. Atienza, M.D.; I. Mathos, Nurse Practitioner (NP); D. Bonnheim, M.D.; M.  
19 Grande, RN; A. Kaleka, M.D.; S. Perkins, RN; Does 1-5. Plaintiff also names as a defendant  
20 California Correctional Health Care Services.<sup>2</sup> Plaintiff claims that he was subjected to  
21 inadequate medical care such that it violated the Eighth Amendment prohibition on cruel and  
22 unusual punishment. Plaintiff is also proceeding on a state law claim for negligence.

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26 <sup>2</sup> Plaintiff is advised that, as an agency of the State of California, California Correctional Health  
27 Care Services is immune from suit under section 1983. Natural Resources Defense Council v. California  
28 Department of Transportation, 96 F.3d 420, 421 (9<sup>th</sup> Cir. 1996); Brooks, 951 F.2d at 1053; Taylor v. List, 880 F.2d  
1040, 1045 (9<sup>th</sup> Cir. 1989).

1 Plaintiff alleges that on February 2, 2012, he sought treatment for an injury that Plaintiff  
2 suffered while moving office equipment at his job assignment at Avenal. On February 14, 2012,  
3 Plaintiff was seen by Dr. Atienza and was told that he would be recommended for hernia surgery.  
4 Plaintiff was told to refrain from exercise while awaiting surgery. On April 12, 2012, Dr.  
5 Atienza "reiterated that he had recommended me for hernia surgery." Dr. Atienza also  
6 prescribed Ibuprofen, Tylenol and Robaxin for pain.

7 On April 13, 2012, Plaintiff appeared at pill line to get his medication. The person  
8 dispensing the medication told Plaintiff he could have the Ibuprofen and Tylenol, but not the  
9 Robaxin as it was an "as needed" prescription. Plaintiff was told to come back later in the day  
10 for that medication. When Plaintiff returned, there were approximately 60 people in line.  
11 Plaintiff was in too much pain to stand in line, so Plaintiff left.

12 Plaintiff alleges that "on numerous occasions" between April 12 and April 22, 2012, he  
13 requested and was denied medication for his back pain. Plaintiff alleges that, as an example, on  
14 April 20, 2012, there were approximately 70 people in line. Plaintiff returned to his housing unit  
15 because it would be too painful to stand in line for that long. Plaintiff went back later in the  
16 evening, and made it to the pill window. The person dispensing the medication "showed me my  
17 medication and told me that I would have to come back tomorrow at five to get it – even after  
18 acknowledging my extreme pain."

19 On April 21, 2012, Plaintiff received a dose of Robaxin. On April 23, 2012, when  
20 Plaintiff went back for another dose, he was informed that his prescription had expired. The  
21 person at the window refused to give Plaintiff an expired dose.

22 On June 13, 2012, Plaintiff submitted a health care request and was seen by Dr. Atienza  
23 the next day. Dr. Atienza told Plaintiff that he had again recommended him for surgery. On  
24 June 27, 2012, Dr. Bonnheim scheduled Plaintiff for the surgeries. On July 6, 2012, Plaintiff  
25 spoke with Defendant Mathos, who assured Plaintiff that he was scheduled for surgery.

26 On July 11, 2012, Plaintiff was summoned by Defendant Bonnheim. He told Plaintiff  
27 that Defendant Mathos had "messed up the paperwork again." Dr. Bonnheim assured Plaintiff  
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1 that he would be scheduled for surgery “soon.” On July 25, 2012, Dr. Atienza told Plaintiff that  
2 he had been approved for surgery “at least twice,” and he did not know why Plaintiff has not had  
3 the surgery yet.

4 On November 6, 2012, Plaintiff was transported to the Correctional Medical Center  
5 where he underwent surgery. Dr. Bonnheim performed the surgery and prescribed Morphine for  
6 pain. Upon his return to Avenal, Defendants Kaleka and Grande changed the prescription from  
7 Morphine to Tylenol. On November 8, 2012, Plaintiff was informed by Mr. Hitchman (not  
8 named as a defendant) that Plaintiff “should not be up and walking around so much yet” and that  
9 there was nothing he could do about Plaintiff having to walk “great distances” to get food and  
10 medication.

11 On November 9, 2012, Plaintiff walked approximately ¼ of a mile to breakfast and to the  
12 clinic to get his pain medication. Plaintiff was told that he had to come back in half an hour to  
13 get his medication. Plaintiff was in too much pain to return a half hour later.

14 On November 10, 2012, Plaintiff was in too much pain to go to breakfast or to the a.m.  
15 medication line. Plaintiff went to the medication line at noon and received Tylenol. The person  
16 dispensing the medication crushed the medication, put into a small cup of water and told Plaintiff  
17 to swallow it in front of him. Because Plaintiff had an empty stomach, he got sick. Plaintiff  
18 alleges that “I still experience pain and discomfort on both sides, i.e., where the surgery was  
19 performed and on my left side – where my hernia has still not been repaired.”

20 **A. Medical Care**

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

1 Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v.  
2 Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate  
3 indifference is shown by “a purposeful act or failure to respond to a prisoner’s pain or possible  
4 medical need, and harm caused by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060).  
5 Where a prisoner is alleging a delay in receiving medical treatment, the delay must have led to  
6 further harm in order for the prisoner to make a claim of deliberate indifference to serious  
7 medical needs. McGuckin at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766  
8 F.2d 404, 407 (9th Cir. 1985)).

9 Here, the Court finds Plaintiff’s allegations to be vague. Plaintiff does clearly set forth an  
10 objectively serious medical condition, but Plaintiff fails to specifically charge each of the  
11 individually named Defendants with specific conduct indicating that they personally engaged in  
12 conduct that constitutes deliberate indifference. To state a claim under section 1983, a plaintiff  
13 must allege that (1) the defendant acted under color of state law and (2) the defendant deprived  
14 him of rights secured by the Constitution or federal law. Long v. County of Los Angeles, 442  
15 F.3d 1178, 1185 (9th Cir. 2006). “A person deprives another of a constitutional right, where that  
16 person ‘does an affirmative act, participates in another’s affirmative acts, or omits to perform an  
17 act which [that person] is legally required to do that causes the deprivation of which complaint is  
18 made.’” Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007) (quoting Johnson v. Duffy, 588  
19 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite causal connection can be established not only  
20 by some kind of direct, personal participation in the deprivation, but also by setting in motion a  
21 series of acts by others which the actor knows or reasonably should know would cause others to  
22 inflict the constitutional injury.’” Id. (quoting Johnson at 743-44). Plaintiff has not specifically  
23 charged each defendant with conduct indicating that they knew of and disregarded a serious risk  
24 to Plaintiff’s health, resulting in injury to Plaintiff. Plaintiff may not hold defendants liable  
25 simply by alleging a serious medical condition and then charge defendants with the vague  
26 allegation that they neglected his condition. Plaintiff must allege facts indicating that each  
27 defendant was aware of a specific harm to Plaintiff, and acted with deliberate indifference to that

1 harm. Plaintiff has failed to do so here. The complaint should therefore be dismissed. Plaintiff  
2 will, however, be granted leave to file an amended complaint.

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

### 9 **III. Conclusion and Order**

10 The Court has screened Plaintiff's complaint and finds that it does not state any claims  
11 Upon 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  
13 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he  
14 may not change the nature of this suit by adding new, unrelated claims in his amended  
15 complaint. George, 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  
17 each named defendant did that led to the deprivation of Plaintiff's constitutional or other federal  
18 rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the "[f]actual allegations must  
19 be [sufficient] to raise a right to relief above the speculative level . . . ." Bell Atlantic Corp. v.  
20 Twombly, 550 U.S. 544, 554 (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,  
23 567 (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  
25 original complaint which are not alleged in an amended complaint are waived." King, 814 F.2d  
26 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord  
27 Forsyth, 114 F.3d at 1474.

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

- 2 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a  
3 claim;
- 4 2. The Clerk's Office shall send to Plaintiff a complaint form;
- 5 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file  
6 an amended complaint;
- 7 4. Plaintiff may not add any new, unrelated claims to this action via his amended  
8 complaint and any attempt to do so will result in an order striking the amended  
9 complaint; and
- 10 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this  
11 action be dismissed, with prejudice, for failure to state a claim.  
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14 IT IS SO ORDERED.

15 Dated: **January 21, 2015**

16 **/s/ Gary S. Austin**

17 UNITED STATES MAGISTRATE JUDGE  
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