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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KAZI DANIEL JONES,  
Plaintiff,  
vs.  
MR. BROWN, et al.,  
Defendants

Case No. 1:14 cv 00124 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 February 14, 2014 (ECF No. 10).

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 brings this action against defendant correctional officials employed by the  
16 California Department of Corrections and Rehabilitation (CDCR) at Wasco State Prison, where  
17 the events at issue occurred. Plaintiff names the following individual defendants: Kitchen  
18 Supervisor Brown; Kitchen Staff Dunlap; Kitchen Staff Armendariz; C/O Cera; Nurse  
19 Practitioner Garza; Chief, Office of Appeals Lozano. Plaintiff’s statement of claim, in its  
20 entirety, follows:

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22 While in Reception I volunteered to work in Wasco State Prison’s  
23 kitchen. The very first day of work about 5 hours in I slipped and  
24 fell, hitting my head on a tray cart. I was taken to San Joaquin (an  
25 outside hospital) where I received 5 staples in the back of my head.  
26 I also received a CT scan, an MRI, and a lumbar puncture to  
27 determine the cause of my migraine headaches, blurry vision,  
28 dizzy spells, nausea and black-outs. I have witnesses who saw the  
incident and who can testify regarding the working conditions, lack  
of work gear and other useful information.

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1 Id. (quoting Johnson at 743-44). Plaintiff has not specifically charged each defendant with  
2 conduct indicating that they knew of and disregarded a serious risk to Plaintiff's health, resulting  
3 in injury to Plaintiff. Plaintiff has failed to do so here. The complaint should therefore be  
4 dismissed. Plaintiff will, however, be granted leave to file an amended complaint.

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

### 11 **III. Conclusion and Order**

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

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

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

1 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord  
2 Forsyth, 114 F.3d at 1474.

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

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

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15 IT IS SO ORDERED.

16 Dated: November 13, 2014

17 /s/ Gary S. Austin

18 UNITED STATES MAGISTRATE JUDGE  
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