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2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF CALIFORNIA  
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7 CHRISTOPHER HINES,

8 Plaintiff,

9 vs.

10 C. GIPSON, et al.,

11 Defendants  
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Case No. 1:14 cv 00563 AWI 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 state prisoner proceeding pro se and in forma pauperis in this civil rights  
16 action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule  
17 302 pursuant to 28 U.S.C. § 636(b)(1).

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  
25 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §  
26 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  
3 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a  
4 short and plain statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R.  
5 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s  
6 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the  
7 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,  
8 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not  
9 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union  
10 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268  
11 (9th Cir. 1982)).

## 12 **II. Plaintiff’s Claims**

13 On March 16, 2012, Plaintiff’s cell was searched, based upon a statement by the control  
14 officer that he had observed Plaintiff placing something in his anal cavity. Plaintiff agreed to  
15 submit to an x-ray, which revealed “some type of contraband” in Plaintiff’s anal cavity. Plaintiff  
16 was placed on a 72 hour contraband watch. Plaintiff alleges that over the 72 hour period, he had  
17 three bowel movements. Plaintiff alleges that Defendants violated prison regulations by keeping  
18 him on contraband watch for 108 hours. Plaintiff also alleges that he was subjected to cruel and  
19 unusual punishment because his hands were handcuffed to his waist, and he had no opportunity  
20 to wash them.

### 21 **A. Conditions of Confinement**

22 “[A] prison official cannot be found liable under the Eighth Amendment for denying an  
23 inmate humane conditions of confinement unless the official knows of and disregards an  
24 excessive risk to inmate health or safety.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). A  
25 plaintiff who claims that the conditions of his confinement fall below the constitutional standard  
26 must make two showings. “First, the plaintiff must make an ‘objective’ showing that the  
27 deprivation was ‘sufficiently serious’ to form the basis for an Eighth Amendment violation.”

1 Johnson v. Lewis, 217 F.3d 726, 731 (9<sup>th</sup> Cir. 2000)(citation omitted). “The Constitution . . .  
2 ‘does not mandate comfortable prisons, and only those deprivations denying ‘the minimal  
3 civilized measure of life’s necessities’ are sufficiently grave to form the basis of an Eighth  
4 Amendment violation.” Wilson v. Seiter, 501 U.S. 294, 298 (1991)(citations omitted). Second,  
5 the prisoner must make a “subjective” showing that prison officials “acted with the requisite  
6 culpable intent such that the infliction of pain is ‘unnecessary and wanton.’ In prison condition  
7 cases, prison officials act with the requisite culpable intent when they act with deliberate  
8 indifference to the inmate’s suffering.” Anderson v. County of Kern, 45 F.3d 1310, 1312 (9<sup>th</sup> Cir.  
9 1995).

10 To make the required objective showing that the conditions of contraband watch were  
11 “sufficiently serious” to support an Eighth Amendment claim, Plaintiff needs to present evidence  
12 of an “excessive risk to inmate health or safety.” Farmer, 511 U.S. at 837. The risk must be  
13 shown in a specific deprivation of a basic human necessity. “Nothing so amorphous as ‘overall  
14 conditions’ can rise to the level of cruel and unusual punishment when no specific deprivation of  
15 a single human need exists.” Wilson v. Seiter, 294, 305 (1991). “To the extent that such  
16 conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay  
17 for their offenses against society.” Rhodes v. Chapman, 452 U.S. 337, 347 (1981). “[E]xtreme  
18 deprivations are required to make out a conditions of confinement claim.” Hudson v. McMillian,  
19 503 U.S. 1, 9 (1992).

20 The nature of the deprivation and the duration of Plaintiff’s stay on contraband watch are  
21 also factors in the Court’s analysis. “The more basic the need, the shorter the time it can be  
22 withheld.’ . . . More modest deprivations can also form the objective basis of a violation, but  
23 only if such deprivations are lengthy or ongoing.” Johnson, 217 F.3d at 731-31 (citations  
24 omitted). “Prison officials must provide all prisoners with adequate food, clothing, shelter,  
25 sanitation, medical care, and personal safety . . . The longer the prisoner is without such benefits,  
26 the closer it comes to being an unwarranted infliction of pain.” Hoptowit v. Ray, 682 F.2d 1237,  
27 1285 (9<sup>th</sup> Cir. 1982).

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4 Here, the Court finds Plaintiff's allegations to be vague. Plaintiff alleges that he was on  
5 contraband watch for 108 hours, 30 hours over the normal period. To state a claim under section  
6 1983, a plaintiff must allege that (1) the defendant acted under color of state law and (2) the  
7 defendant deprived him of rights secured by the Constitution or federal law. Long v. County of  
8 Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). "A person deprives another of a  
9 constitutional right, where that person 'does an affirmative act, participates in another's  
10 affirmative acts, or omits to perform an act which [that person] is legally required to do that  
11 causes the deprivation of which complaint is made.'" Hydrick v. Hunter, 500 F.3d 978, 988 (9th  
12 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). "[T]he 'requisite  
13 causal connection can be established not only by some kind of direct, personal participation in  
14 the deprivation, but also by setting in motion a series of acts by others which the actor knows or  
15 reasonably should know would cause others to inflict the constitutional injury.'" Id. (quoting  
16 Johnson at 743-44). Plaintiff has not specifically charged each defendant with conduct  
17 indicating that they knew of and disregarded a serious risk to Plaintiff's health, resulting in injury  
18 to Plaintiff. Plaintiff may not hold defendants liable simply by alleging that he was subjected to  
19 an extended contraband watch. Plaintiff must allege some facts indicating that he was deprived  
20 of a basic human necessity. Plaintiff must allege facts indicating that each defendant was aware  
21 of a specific harm to Plaintiff, and acted with deliberate indifference to that harm. Plaintiff has  
22 failed to do so here. The complaint should therefore be dismissed. Plaintiff will, however, be  
23 granted leave to file an amended complaint.

24 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to  
25 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where  
26 that defendant is employed and in what capacity, and explain how that defendant acted under  
27 color of state law. Plaintiff should state clearly, in his or her own words, what happened.

1 Plaintiff must describe what each defendant, *by name*, did to violate the particular right described  
2 by Plaintiff. Plaintiff has failed to do so here.

### 3 **III. Conclusion and Order**

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

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

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

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

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

- 1           4.     Plaintiff may not add any new, unrelated claims to this action via his amended  
2                 complaint and any attempt to do so will result in an order striking the amended  
3                 complaint; and  
4           5.     If Plaintiff fails to file an amended complaint, the Court will recommend that this  
5                 action be dismissed, with prejudice, for failure to state a claim.  
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8                 IT IS SO ORDERED.

9                                 Dated: **January 13, 2015**

10 **/s/ Gary S. Austin**

11 UNITED STATES MAGISTRATE JUDGE  
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