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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES ARTHUR MOOREHEAD,

Plaintiff,

vs.

RALPH M. DIAZ, et al.,

Defendants

Case No. 1:14 cv 01021 GSA PC

ORDER DISMISSING FIRST AMENDED  
COMPLAINT AND GRANTING PLAINTIFF  
LEAVE TO FILE A SECOND AMENDED  
COMPLAINT

AMENDED COMPLAINT DUE  
IN THIRTY DAYS

**I. Screening Requirement**

Plaintiff is a former 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 August 4, 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 This action proceeds on the August 14, 1014, first amended complaint. Plaintiff,  
16 formerly an inmate in the custody of the California Department of Corrections and Rehabilitation  
17 (CDCR) at Corcoran State Prison, brings this civil rights action against defendant CDCR  
18 officials employed by the CDCR at Corcoran. Plaintiff names several medical officials as  
19 defendants. Plaintiff fails to allege any facts or charge any of the named defendants with any  
20 particular conduct. Plaintiff attaches as exhibits to his complaint copies of documents from his  
21 medical record. Plaintiff is advised that the Court will not consider documents attached to the  
22 complaint in order to make the complaint complete. Plaintiff must allege all facts in support of  
23 his claims in the complaint. Plaintiff is advised of the following legal standards.

### 24 **A. Medical Care**

25 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an  
26 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d  
27 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)).

1 The two part test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical  
2 need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further  
3 significant injury or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s  
4 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v.  
5 Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v.  
6 Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate  
7 indifference is shown by “a purposeful act or failure to respond to a prisoner’s pain or possible  
8 medical need, and harm caused by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060).  
9 Where a prisoner is alleging a delay in receiving medical treatment, the delay must have led to  
10 further harm in order for the prisoner to make a claim of deliberate indifference to serious  
11 medical needs. McGuckin at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766  
12 F.2d 404, 407 (9th Cir. 1985)).

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

1 to Plaintiff, and acted with deliberate indifference to that harm. Plaintiff has failed to do so here.  
2 The complaint should therefore be dismissed. Plaintiff will, however, be granted leave to file an  
3 amended complaint.

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

### 10 **III. Conclusion and Order**

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

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

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

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16 IT IS SO ORDERED.

17 Dated: February 26, 2015

18 /s/ Gary S. Austin

19 UNITED STATES MAGISTRATE JUDGE  
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