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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DAMON ANDERSON,  
Plaintiffs,  
v.  
KEVIN SMITH, et al.,  
Defendants.

No. 2:24-CV-0483-DMC

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s first amended complaint, ECF No. 11.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). This provision also applies if the plaintiff was incarcerated at the time the action was initiated even if the litigant was subsequently released from custody. See Olivas v. Nevada ex rel. Dep’t of Corr., 856 F.3d 1281, 1282 (9th Cir. 2017). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply,

1 concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to  
2 Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice  
3 of the plaintiff's claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121,  
4 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity  
5 overt acts by specific defendants which support the claims, vague and conclusory allegations fail  
6 to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening  
7 required by law when the allegations are vague and conclusory.

### 8 9 **I. PLAINTIFF'S ALLEGATIONS**

10 This action proceeds on Plaintiff's first amended complaint. See ECF No. 11.  
11 Plaintiff names the following defendants: (1) Kevin Smith, a physician and surgeon at Mule  
12 Creek State Prison (MCSP); (2) Michael Ullery, a physician and surgeon at MCSP; (3) Bhupinder  
13 Lehil, a physician and surgeon at MCSP; (4) Wesley Vaughn, chief physician and a surgeon at  
14 MCSP; Peter Lee, a physician and surgeon at MCSP; (6) Kevin Yang, a registered nurse at  
15 MCSP; (7) Klatt, a registered nurse at MCSP; and (8) Gavin Newsom, Governor of California.  
16 See id. at 2-3. Plaintiff alleges facts in this amended complaint identical to those in his initial  
17 complaint. See ECF No. 1. The initial complaint only brought claims against Smith, Ullery, Lehil,  
18 Vaughn, and Wong. See id. The Court found that Plaintiff had presented cognizable Eighth  
19 Amendment medical deliberate indifference claims against Ullery, Lehil, Wong, and Klatt,  
20 although Klatt was not named as a defendant in the initial complaint. See ECF No. 10. Plaintiff  
21 was granted leave to amend his claims against Defendant Vaughn. See id.

22 In addition to the facts alleged in the initial complaint, Plaintiff has incorporated  
23 all of the facts and medical documents from a separately filed emergency motion for preliminary  
24 injunction. See ECF No. 2; ECF No. 11, pgs. 14-31. Facts alleged in the emergency motion are  
25 consistent with the facts alleged in the rest of the complaint and do not set forth any substantial  
26 additional facts. See ECF No. 11, pgs. 14-31 Plaintiff has further amended his original complaint  
27 to include facts alleging constitutional rights violations by Defendants Ullery, Yang, Smith,  
28 Vaughn, Lee, and Newsom. See id. at 12-13. Finally, Plaintiff has included documents related to

1 denial of medical services. See id. at 32-40. Plaintiff now alleges violations of his rights under the  
2 Eighth Amendment for deliberate indifference to medical needs, under the First Amendment for  
3 retaliation, and under the Fourteenth Amendment for unequal treatment. See id. at 9-13.

4 Plaintiff claims that, prior to June 1, 2023, he had had six back surgeries, which  
5 were a combination of “Laminectomies [and] Disectomies [sic]” See id. at 9. In June 2023,  
6 Plaintiff began experiencing severe lower back pain, numbness in his groin area and left leg,  
7 nerve pain in both legs, and incontinence. See id. On June 8, Plaintiff was taken to the emergency  
8 room when he suffered severe burns in his groin area that he was unable to feel. See id. Plaintiff  
9 was referred to a neurosurgeon for a consultation and prescribed pain medication, which Plaintiff  
10 claims he did not receive. See id. Plaintiff later met with Defendant Lehil, his primary care  
11 physician, and described his symptoms. See id. Defendant Lehil referred Plaintiff to a  
12 neurosurgeon, gave him a cane and a wheelchair, and provided Plaintiff with a 14-day  
13 prescription for Prednisone. See id. at 9-10. Plaintiff expressed at that time that he wished to have  
14 the surgery as he was a recovering heroin addict and wanted to avoid relying on “hard pain  
15 medication.” Id. at 10.

16 On June 30, Plaintiff met with a neurosurgeon, Dr. Thaiyananthan, who  
17 recommended Plaintiff undergo a lumbar fusion. See id. at 10. Plaintiff later met again with  
18 Defendant Lehil, who submitted a Request for Services (RFS) on July 10. See id. Plaintiff claims  
19 that this RFS did not include all information relevant to his condition, including Plaintiff’s  
20 physical limitations, numbness, or incontinence. See id. The RFS was later denied by someone  
21 Plaintiff believes to be Defendant Smith, who had never physically examined Plaintiff. See id.

22 From July 10 until approximately October 20, Plaintiff claims to have experienced  
23 “ongoing torture” and never got more than an hour or two of sleep at a time. See id. During this  
24 time, Plaintiff claims to have begged Defendant Klatt for help. See id. Plaintiff claims Defendant  
25 Klatt would tell Plaintiff that the surgery would happen soon and that he would send Plaintiff to  
26 the hospital when asked. See id. at 10-11. In late October, Plaintiff informed Defendant Klatt that  
27 he would like to go to the hospital, but Defendant Klatt instead sent him to an unknown doctor  
28 who treated plaintiff as “a drug seeking nuisance.” Id. at 11.

1 In early October, Plaintiff's incontinence became persistent, and Plaintiff  
2 submitted a 602 inmate grievance for denying Plaintiff the surgery. See id. On October 20,  
3 Plaintiff met again with Defendant Lehil, who informed Plaintiff that the RFS had been denied.  
4 See id. Plaintiff informed Defendant Lehil that he had filed a grievance with the prison. See id.  
5 Defendant Lehil sent Plaintiff back to meet again with Dr. Thaiyanathan. See id. Plaintiff claims  
6 Dr. Thaiyanathan did not understand why the surgery was not performed and said he would order  
7 it again. See id.

8 On October 23, 2023, Plaintiff met with Defendant Wong who Plaintiff claims did  
9 not physically examine him. See id. On October 26, Plaintiff met with Defendant Lehil, who  
10 informed Plaintiff that he would need to submit another RFS as Defendant Ullery had denied the  
11 previous RFS because Defendant Wong had written in Plaintiff's chart that there was nothing  
12 wrong with him. See id. at 11-12. Plaintiff believes that Defendant Klatt told Defendant Ullery  
13 that nothing was wrong with Plaintiff. See id. at 12. Plaintiff alleges that Defendant Ullery sent  
14 Defendant Wong to see Plaintiff and conspired to lie to prevent Plaintiff's surgery to shield them  
15 from liability related to the previously filed inmate grievance. See id.

16 At the meeting on October 26, Defendant Lehil informed Plaintiff that he would  
17 submit another RFS. See id. Plaintiff insisted that Defendant Lehil include all of his symptoms,  
18 including the incontinence, lack of sleep, and torturous pain. See id. However, Plaintiff claims  
19 that Defendant Lehil did not include the correct information. In mid-November, Defendant Lehil  
20 informed Plaintiff that the new RFS had been denied. See id. At that point, plaintiff claims to  
21 have been suffering from "severe depression, anxiety, pain, and hopelessness." Id. When Plaintiff  
22 requested a urologist to address his incontinence, Plaintiff claims Defendant Lehil responded with  
23 "we are done here now go!" Id.

24 In January 2024, Plaintiff met again with Defendant Lehil. See id. Plaintiff claims  
25 Defendant Lehil told him "I am shipping you out so another Dr. has to deal with you." Id.  
26 Defendant Lehil also submitted another RFS. See id. A few days after that meeting, Plaintiff was  
27 informed by Correctional Counselor Mendoza that he was being transferred on Defendant Lehil's  
28 orders. See id. When Plaintiff informed Mendoza of what Defendant Lehil had said, Mendoza

1 agreed to prevent the transfer. See id.

2 Plaintiff alleges that “Defendants have all shown their willingness to lie and cover  
3 up and retaliate all to escape liability for not providing plaintiff with a surgery that if not done  
4 will cause irreparable harm” Id. Plaintiff does not offer additional factual allegations to support  
5 this claim. Plaintiff believes that Defendants Ullery, Yang, Smith, Vaughn, and Lee comprise the  
6 “SMART” committee responsible for denying Defendant Lehil’s RFS’s. See id. at 12-13. Plaintiff  
7 claims that each denial states a different reason for denying the surgery, which reflects an  
8 intention to torture Plaintiff. See id. at 13. Plaintiff additionally alleges that Defendant Vaughn  
9 told Plaintiff to take advantage of the therapies offered to him. See id. When asked what therapies  
10 he was referring to, Defendant Vaughn responded, “we are done here.” Id.

11 Finally, Plaintiff claims that Defendant Newsom allows transgender inmates to  
12 receive elective surgeries for gender-affirming care despite the unnecessary risks involved. See  
13 id. Plaintiff claims that this is in contrast to decisions made regarding his health and the  
14 recommendations of Dr. Thaiyanathan. See id.

## 15 16 **II. DISCUSSION**

17 As with the original complaint, the Court finds that Plaintiff has stated cognizable  
18 claims under the Eighth Amendment against the following defendants for deliberate indifference  
19 to Plaintiff’s medical needs: Defendant Lehil for incorrectly documenting Plaintiff’s symptoms,  
20 Defendant Klatt for ignoring Plaintiff’s requests for medical assistance, Defendant Wong for  
21 entering a chart note stating nothing was wrong with Plaintiff despite not examining him, and  
22 Defendant Smith for denying Plaintiff’s surgery despite not examining Plaintiff. Plaintiff has also  
23 stated cognizable claims under the Eighth Amendment for deliberate indifference to Plaintiff’s  
24 medical needs against Defendants Klatt, Ullery, and Wong for conspiring to send Defendant  
25 Wong to see Plaintiff and noting that there was nothing wrong with Plaintiff despite not  
26 examining him. Plaintiff has also stated cognizable claims under the Eighth Amendment against  
27 Defendants Lehil and Vaughn under the Eighth Amendment for denying Plaintiff access to a  
28 medical specialist to address his incontinence. Plaintiff has failed to present cognizable claims

1 against Defendants Yang, Lee, and Newsom as Plaintiff has failed to establish a causal  
2 connection between these defendants and the alleged violations of constitutional rights.

3 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual  
4 connection or link between the actions of the named defendants and the alleged deprivations. See  
5 Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). “A  
6 person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of  
7 § 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform  
8 an act which he is legally required to do that causes the deprivation of which complaint is made.”  
9 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations  
10 concerning the involvement of official personnel in civil rights violations are not sufficient. See  
11 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth  
12 specific facts as to each individual defendant’s causal role in the alleged constitutional  
13 deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

14 Here, Plaintiff does not allege any facts that show a causal connection between  
15 actions taken by Defendant Newsom, who is named for the first time in the first amended  
16 complaint, and the alleged constitutional violations. Similarly, while Plaintiff does express his  
17 belief that Defendants Yang and Lee are members of the “SMART” committee that denied his  
18 RFS, Plaintiff does not allege any facts to support this claim and the belief appears to be only  
19 speculative. In any event, Plaintiff has not explained the specific actions of Defendants Yang and  
20 Lee. Plaintiff will be provided one further opportunity to amend to allege facts showing how  
21 these defendants were involved in the alleged constitutional violations.

### 22 23 **III. CONCLUSION**

24 Because it is possible that the deficiencies identified in this order may be cured by  
25 amending the complaint, Plaintiff is entitled to leave to amend. See Lopez v. Smith, 203 F.3d  
26 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an  
27 amended complaint supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,  
28 1262 (9th Cir. 1992). Therefore, if Plaintiff amends the complaint, the Court cannot refer to the

1 prior pleading in order to make Plaintiff's amended complaint complete. See Local Rule 220. An  
2 amended complaint must be complete in itself without reference to any prior pleading. See id.

3 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the  
4 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See  
5 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
6 each named defendant is involved and must set forth some affirmative link or connection between  
7 each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167  
8 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

9 Because the complaint appears to otherwise state cognizable claims, if no amended  
10 complaint is filed within the time allowed therefor, the Court will issue findings and  
11 recommendations that the claims identified herein as defective be dismissed, as well as such  
12 further orders as are necessary for service of process as to the cognizable claims.

13 Accordingly, IT IS HEREBY ORDERED that Plaintiff may file a second amended  
14 complaint within 30 days of the date of service of this order.

15  
16 Dated: June 5, 2024



17  
18 DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE