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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**

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KEVIN JACKSON, an individual,

Plaintiff,

v.

ALVARO C. TRAQUINA, M.D., Chief
Medical Officer/Health Care Manager,
of California State Prison-Solano of the
California Department of Corrections
and Rehabilitation, in his individual and
official capacities; JASON A.
ROHRER, M.D., an individual; XXX
HSIEH, M.D., and DOES 1-10,

Defendants.

Case No:2:08-cv-01954-MCE-JFM

**FIRST AMENDED COMPLAINT
FOR DAMAGES FOR CRUEL
AND UNUSUAL PUNISHMENT
BASED ON DENIAL OF MEDICAL
CARE IN VIOLATION OF THE
EIGHTH AMENDMENT TO THE
UNITED STATES CONSTITUTION**

[DEMAND FOR JURY TRIAL]

1 Plaintiff KEVIN JACKSON hereby brings this First Amended Complaint
2 for violation of civil rights pursuant to 42 USC Section 1983 against the named
3 Defendants, who are employees of the California Department of Corrections and
4 Rehabilitation (“CDCR”), a public entity, and DOE Defendants 1 through 10,
5 inclusive, who are also believed to be employees or agents of the CDCR or other
6 departments of the State of California, and alleges as follows:

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8 **JURISDICTION AND VENUE**

9 1. This action arises under the United States Constitution and the Civil
10 Rights Act pursuant to 42 U.S.C § 1983 and the Eighth and Fourteenth
11 Amendments to the United States Constitution, wherein Plaintiff seeks to redress
12 deprivations by Defendant, and Unknown Named Defendants 1 through 10.
13 Jurisdiction of this Court is invoked under 28 U.S.C. §§1331, and 1343 and the
14 aforementioned statutory and constitutional provisions. Plaintiff further invokes
15 the supplemental jurisdiction of this Court to hear and decide claims arising under
16 state law.

17 2. At all times mentioned herein, all defendants were acting under color
18 of state law, or rights secured to plaintiff by the Eighth and Fourteenth
19 Amendments to the United States Constitution and the laws of the United States.
20 This court has supplemental jurisdiction over those claims asserted under state law
21 by virtue of 28 U.S.C. Section 1367.

22 3. Venue is founded in this judicial district upon 28 U.S.C § 1391 as the
23 acts complained of arose in this district.

24
25 **THE PARTIES**

26 4. Plaintiff KEVIN JACKSON is an inmate of the California State
27 Prison at Solano (“CSP Solano”). Plaintiff is infected with the hepatitis C virus
28 (“HCV”) and had not received treatment for this serious medical condition from

1 Defendants until the filing of his original complaint in August 2008.

2 5. Defendant ALVARO C. TRAQUINA, M.D is the Chief Medical
3 Officer/Health Care Manager for the California State Prison at Solano. He is an
4 employee of the State of California. He is alleged to have been acting, at all times
5 relevant to this case, in both his individual and official capacities and under the
6 color of state law within the meaning of 42 USC § 1983.

7 6. Defendant JASON A. ROHRER, M.D. was, at all times relevant to
8 this action, a physician employed by or contracted with the State of California for
9 the Solano State Prison, working out of the prison's Primary Clinic. He is alleged
10 to have been acting, at all times relevant to this case, in his individual capacity and
11 under color of state law within the meaning of 42 USC § 1983.

12 7. Defendant XXX Hsieh, M.D. was, at all times relevant to this action,
13 a physician employed by or contracted with the State of California for the Solano
14 State Prison. He is alleged to have been acting, at all times relevant to this case, in
15 his individual capacity and under color of state law within the meaning of 42 USC
16 § 1983.

17 8. DOE DEFENDANTS 1 TO 10 are employees of the state of
18 California. Their identities are presently unknown. The Complaint will be
19 amended to identify them by name when their identities are discovered.

20
21 **STATEMENT OF FACTS**

22 9. Hepatitis C virus is one of the most important causes of chronic liver
23 disease in the United States. It is an RNA virus. While it accounts for 15 percent
24 of acute viral hepatitis, it is responsible for nearly 70 percent of chronic hepatitis,
25 and up to 50 percent of cirrhosis, end-stage liver disease, and liver cancer in the
26 United States. The hepatitis C virus mutates rapidly and changes the protein
27 composition of the protein envelope which surrounds it. This allows it to evade the
28 immune system and, for this reason, it has been difficult to develop a vaccine to

1 hepatitis C. Genotypes 1a and 1b are the most common in the United States (75
2 percent of cases).

3 10. Hepatitis C transmission occurs primarily through exposure to
4 infected blood. Approximately 75 percent of California inmates with hepatitis C
5 would be expected to have chronic hepatitis C infection (15 to 25 percent
6 spontaneously clear the virus). Persons aged 40 to 59 years have the highest
7 prevalence of HCV infection, and in this age group, the prevalence is highest in
8 African Americans (6.1 percent). African American men are the group least likely
9 to spontaneously clear the virus.

10 11. The biggest threat from hepatitis C infection is that the acute disease
11 fails to resolve in most instances and the disease advances to chronic hepatitis C.
12 The most common sequelae of chronic HCV infection are progressive liver fibrosis
13 leading to cirrhosis, end-stage liver disease and hepatocellular carcinoma.
14 Treatment is most effective when the degree of fibrosis is minimal.

15 12. HCV infection is diagnosed by blood tests. These tests detect
16 antibodies that the body makes to the hepatitis C virus. If the patient is determined
17 to have detectable virus in his blood over a period of months, he is considered to
18 have chronic hepatitis C. The standard of care for treatment in the United States
19 has been set forth by the National Institutes of Health.

20 13. If the patient is infected with genotype 1, then he should be offered a
21 liver biopsy. It is used to determine the amount of scarring (fibrosis) present in the
22 liver and this information is critical to deciding on whether to treat with the
23 antiviral drugs.

24 14. Virtually all experts recommend treatment for patients with Stage II
25 disease, as determined by liver biopsy. However, the California Department of
26 Corrections and Rehabilitation and their employees, including defendants herein,
27 have refused to treat patients with Stage II disease. Until recently, Defendants
28 have customarily required a more advanced stage of liver damage before offering

1 treatment to inmates and thus allowed inmates' disease to advance, which caused
2 more liver injury, and made treatment less likely to succeed.

3 15. Plaintiff KEVIN JACKSON, at all relevant times, was and is
4 currently incarcerated at the California State Prison at Solano.

5 16. Plaintiff is a 52-year old African American who was diagnosed with a
6 serious medical condition, chronic Hepatitis C infection, in 2000. He is infected
7 with genotype 1a. He had a liver biopsy in 2000 which was normal. Despite his
8 requests, Plaintiff did not have a repeat liver biopsy until August 27, 2007, even
9 though the standard of care is to repeat the biopsy every five years.

10 17. On October 18, 2006, Plaintiff was seen by a gastroenterologist at UC
11 Davis who advised Defendant Rohrer, Plaintiff's treating physician, that the liver
12 biopsy needed to be repeated and that liver biopsies are done every five years.

13 18. It took an additional ten (10) months for the liver biopsy to be
14 repeated. Plaintiff had a liver biopsy performed at the Sutter Solano Medical
15 Center on August 27, 2007. The biopsy revealed Stage II disease.

16 19. Plaintiff has repeatedly requested treatment for his chronic Stage II
17 hepatitis C infection. He has been refused treatment. He has exhausted his
18 administrative appeals and only very recently, since filing his original lawsuit in
19 August 2008, did he begin to receive treatment for his Hepatitis C infection.

20
21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF CIVIL RIGHTS [42 U.S.C. §1983]**

23 **EIGHTH AMENDMENT**

24 **(By Plaintiff Against All Defendants)**

25
26 20. Plaintiff hereby incorporates and realleges paragraphs 1 through 19 of
27 this Complaint as though fully set forth hereat.

28 21. The standard of care, as set forth by the National Institutes of Health,

1 the Center for Disease Control in Atlanta, and by civilian practice in California is
2 to treat patients with Hepatitis C when it reaches Stage II. Based thereon, Plaintiff
3 alleges that he has had a serious medical condition for which he was entitled to
4 treatment at least as of August 2007 when a liver biopsy revealed that his Hepatitis
5 C was at Stage 2, Grade 2.

6 22. As alleged herein and above, Defendant maintained a policy and
7 practice of denying combination therapy unless and until an inmate's disease
8 advanced beyond Stage II. Based on this policy, Plaintiff was irreparably harmed,
9 as failure to provide combination therapy leads to further injury due to
10 advancement of the disease. This denial of diagnostic evaluations (liver biopsies)
11 and treatment constitutes deliberate indifference as set forth in Estelle v. Gamble,
12 429 U.S. 97 (1976). Defendant's policies to delay and to deny care have been
13 intentionally promulgated and executed for financial reasons in complete disregard
14 for the medical needs of Plaintiff, an inmate with HCV infection. The policy was
15 not promulgated on the basis of legitimate differences in medical opinion but
16 solely on the basis of cost considerations and in disregard of the serious medical
17 needs of inmates.

18 23. Defendants were, at all relevant times, employed by the State of
19 California and acted under color of law to deprive Plaintiff constitutionally
20 protected rights including, but not limited to, the right to be free of cruel and
21 unusual punishment, guaranteed by the Eighth Amendment to the United States
22 Constitution, made applicable to the states through the Fourteenth Amendment.

23 24. As alleged herein and above, Defendants' failure to treat Plaintiff for
24 his Hepatitis C constitutes a violation of Plaintiff's Eighth Amendment rights
25 because Defendants denied and delayed treatment with deliberate indifference to
26 Plaintiff's serious medical needs.

27 25. At all times relevant Defendants acted under color of law to delay and
28 deny Plaintiff proper medical care for his Hepatitis C. Defendants knew or should

1 have known that Plaintiff had Hepatitis C. As a result, Defendants knew or should
2 have known that denying and delaying a treatment was an excessive risk to
3 Plaintiff's health. Defendants consciously disregarded this risk in violation of
4 Plaintiff's Eighth Amendment rights. Defendants' failure to provide treatment for
5 Plaintiff's Hepatitis C was not based on legitimate differences in medical opinion
6 but on deliberate indifference and conscious disregard for Plaintiff's serious
7 medical needs.

8 26. Defendant Traquina, at all times relevant to this case, acted in his
9 individual capacity and under the color of state law, with deliberate indifference to
10 Plaintiff's serious medical needs by failing to approve treatment for Plaintiff for
11 Hepatitis C. Defendant Traquina knew that denying and delaying Hepatitis C
12 treatment was an excessive risk to Plaintiff's health. Defendant consciously
13 disregarded this risk by repeatedly failing to approve a repeat liver biopsy until
14 2007, and failing to approve treatment with combination drug therapy in violation
15 of Plaintiff's Eighth Amendment rights.

16 27. Defendant Rohrer, at all times relevant to this case, acted in his
17 individual capacity and under the color of state law, with deliberate indifference to
18 Plaintiff's serious medical needs by failing to treat Plaintiff for Hepatitis C.
19 Defendant Rohrer knew that denying and delaying Hepatitis C treatment was an
20 excessive risk to Plaintiffs health. Defendant consciously disregarded this risk by
21 repeatedly failing to perform a liver biopsy and by failing to treat Plaintiff with
22 combination drug therapy in violation of Plaintiff's Eighth Amendment rights.

23 28. Defendant Hsieh, at all times relevant to this case, acted in his
24 individual capacity and under the color of state law, with deliberate indifference to
25 Plaintiff's serious medical needs by failing to treat Plaintiff for Hepatitis C.
26 Defendant Hsieh knew that denying and delaying Hepatitis C treatment was an
27 excessive risk to Plaintiffs health. Defendant consciously disregarded this risk by
28 repeatedly failing to perform a liver biopsy and by failing to treat Plaintiff with

1 combination drug therapy in violation of Plaintiff's Eighth Amendment rights.
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3 29. As a result in delay in obtaining a second liver biopsy and delay in
4 treating his Hepatitis C infection, Plaintiff's liver damage increased and now he is
5 less likely to respond to treatment. Further, because of these delays, Plaintiff's
6 treatment is more difficult and he is at increased risk of developing cirrhosis, liver
7 failure, and hepatocellular carcinoma. Additionally, there is a substantial risk that
8 Plaintiff will suffer further unnecessary and wanton infliction of pain and suffering
9 as a result of likely complications associated with hepatitis C.
10

11 30. Defendant's policy and practice to fail and refuse to treat inmates
12 infected with hepatitis C at Stage II, was and is in deliberate indifference to
13 Plaintiff's constitutional rights and violates the prohibition against cruel and
14 unusual punishment under the Eighth Amendment to the United States
15 Constitution.
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17 31. At all relevant times, Defendants, in failing to treat Stage II hepatitis C,
18 have acted under color of State law to deprive Plaintiff of his constitutionally
19 protected rights including, but not limited to, the right to be free of cruel and
20 unusual punishment, guaranteed by the Eighth Amendment to the United States
21 Constitution.
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23 PRAYER FOR RELIEF

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25 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:
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