



1 I grant Ellis’s application to proceed in forma pauperis<sup>6</sup> and again screen his sixth  
2 amended complaint under 28 U.S.C. § 1915A. Despite being directed to do so, Ellis has still not  
3 stated a claim against Sheriff Lombardo, so I dismiss those claims with prejudice. But Ellis may  
4 yet be able to state a claim against the unnamed individuals who confiscated his medications,  
5 suggested he kill himself, and failed to treat his psychiatric condition, so I dismiss those claims  
6 without prejudice and with leave to amend. If Ellis can name those medical personnel, his  
7 Fourteenth Amendment claims against those defendants may proceed.

### 8 **Background**<sup>7</sup>

9 Ellis, who suffers from epilepsy and bipolar disorder, alleges that he received inadequate  
10 medical care while in the custody of Sheriff Lombardo at the Clark County Detention Center  
11 (“CCDC”).<sup>8</sup> Ellis claims that, while he was at CCDC, unnamed medical personnel withheld his  
12 medications and ignored his condition, resulting in him hearing voices, hallucinating, having a  
13 seizure, and being placed on suicide watch.<sup>9</sup> Despite being aware of his psychological disorders,  
14 the CCDC’s medical staff did little to assist him; one unnamed staff member, in fact, suggested  
15 that he should “do everyone a favor” and kill himself.<sup>10</sup> Ellis unsuccessfully attempted to  
16 comply with that request.<sup>11</sup>

---

18  
19 <sup>6</sup> ECF No. 1 (application to proceed in forma pauperis). Based on the financial information  
20 provided, I find that plaintiff is unable to prepay the full filing fees in this matter, and I grant the  
21 application.

21 <sup>7</sup> This is merely a summary of facts alleged in the complaint and should not be construed as  
22 findings of fact.

22 <sup>8</sup> See generally ECF No. 26.

23 <sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

1 Ellis concludes that this conduct violated his Fourteenth Amendment rights and that  
2 Sheriff Lombardo and multiple John and Jane Does were deliberately indifferent to his serious  
3 medical needs. He seeks damages for his pain and suffering.<sup>12</sup>

#### 4 Discussion

##### 5 A. Screening standard

6 Federal courts must conduct a preliminary screening in any case in which a prisoner  
7 seeks redress from governmental entities or their officers and employees.<sup>13</sup> In its review, the  
8 court must identify any cognizable claims and dismiss any claims that are frivolous or malicious,  
9 that fail to state a claim upon which relief may be granted, or that seek monetary relief from a  
10 defendant who is immune from such relief.<sup>14</sup>

11 Section 1915(e)'s failure-to-state-a-claim standard "is the same as the Federal Rule of  
12 Civil Procedure 12(b)(6) standard for failure to state a claim"<sup>15</sup> and requires a properly pled  
13 complaint to contain "a short and plain statement of the claim showing that the pleader is entitled  
14 to relief."<sup>16</sup> While Federal Rule 8 does not require detailed factual allegations, it demands more  
15 than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action."<sup>17</sup>  
16 "Factual allegations must be enough to rise above the speculative level."<sup>18</sup> To survive a motion

---

17  
18  
19 <sup>12</sup> *Id.* at 2–3, 4, 9.

20 <sup>13</sup> *See* 28 U.S.C. § 1915A(a).

21 <sup>14</sup> *See id.* at § 1915A(b)(1), (2).

22 <sup>15</sup> *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (citing generally *Lopez v. Smith*, 203  
23 F.3d 1122 (9th Cir. 2000)).

<sup>16</sup> Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

<sup>17</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

<sup>18</sup> *Twombly*, 550 U.S. at 555.

1 to dismiss, a complaint must “contain enough facts to state a claim to relief that is plausible on  
2 its face.”<sup>19</sup>

3 Although allegations of a pro se complainant are held to less stringent standards than  
4 pleadings drafted by lawyers,<sup>20</sup> all or part of a complaint filed by a prisoner may be dismissed  
5 sua sponte if the prisoner’s claims lack an arguable basis either in law or in fact or are  
6 “frivolous.” Unlike Federal Rule 12(b)(6), § 1915(e) accords judges “the unusual power to  
7 pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual  
8 contentions are clearly baseless.”<sup>21</sup> The court need not accept all well-pled allegations as true,  
9 but must instead assess whether plaintiff’s allegations are “clearly baseless,” “fanciful,”  
10 “fantastic,” or “delusional.”<sup>22</sup> Unless it is absolutely clear that no amendment can cure the  
11 defect, a pro se litigant proceeding in forma pauperis is entitled to an opportunity to amend the  
12 complaint before dismissal.<sup>23</sup>

### 13 **B. Ellis’s Fourteenth Amendment claims**

#### 14 ***I. Claim against Sheriff Lombardo***

15 When I dismissed Ellis’s fourth amended complaint with leave to amend, I informed Ellis  
16 that he had failed to allege specific facts regarding Sheriff Lombardo’s conduct.<sup>24</sup> As I noted in  
17 my order, under 42 U.S.C. § 1983, a defendant is liable “only upon a showing of personal  
18

---

19 <sup>19</sup> *Iqbal*, 556 U.S. at 696 (internal quotation marks and citation omitted).

20 <sup>20</sup> See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972);  
*Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

21 <sup>21</sup> *Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

22 <sup>22</sup> *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992) (quoting *Nietzke*, 490 U.S. at 325–28)  
(internal quotation marks omitted).

23 <sup>23</sup> See *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995).

<sup>24</sup> ECF No. 23 at 4.

1 participation by [that] defendant.”<sup>25</sup> I also explained that, because “vicarious liability is  
2 inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each government-official  
3 defendant, through the official’s own individual actions, violated the Constitution.”<sup>26</sup> I informed  
4 Ellis that he could not hold Sheriff Lombardo liable merely because Lombardo placed Ellis in  
5 custody or because some employees at CCDC violated Ellis’s rights.<sup>27</sup> In addition, I instructed  
6 Ellis that he must allege facts sufficient to show that Sheriff Lombardo himself violated his  
7 rights.<sup>28</sup> Despite this clear guidance, Ellis has still not alleged any facts about Sheriff  
8 Lombardo’s conduct or behavior, much less how that conduct has resulted in a deprivation of  
9 Ellis’s constitutional rights. So I dismiss his claim against Sheriff Lombardo with prejudice.  
10 Ellis may not sue Sheriff Lombardo in this action.

## 11 **2. Claims against the doe defendants**

12 Although it is not entirely clear, it appears that Ellis was a pre-trial detainee at CCDC at  
13 the time of the alleged violations. As I explained in my prior order,<sup>29</sup> the Fourteenth  
14 Amendment’s Due Process Clause protects pretrial detainees from conditions constituting  
15 punishment.<sup>30</sup> Courts analyze Fourteenth Amendment claims regarding denial of the right to  
16 adequate medical care under an objective, deliberate-indifference standard,<sup>31</sup> which requires  
17 facts showing: “(1) the defendant made an intentional decision with respect to the conditions  
18

---

19 <sup>25</sup> *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

20 <sup>26</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).

21 <sup>27</sup> ECF No. 23 at 4.

22 <sup>28</sup> *Id.*

22 <sup>29</sup> *Id.* at 5-6.

23 <sup>30</sup> *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1971).

<sup>31</sup> *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018).

1 under which the plaintiff was confined; (2) those conditions put the plaintiff at substantial risk of  
2 suffering serious harm; (3) the defendant did not take reasonable available measures to abate that  
3 risk, even though a reasonable official in the circumstances would have appreciated the high  
4 degree of risk involved—making the consequences of the defendant’s conduct obvious; and (4)  
5 by not taking such measures, the defendant caused the plaintiff’s injuries.<sup>32</sup> “With respect to the  
6 third element, the defendant’s conduct must be objectively unreasonable, a test that will  
7 necessarily ‘turn[] on the facts and circumstances of each particular case.’”<sup>33</sup> A plaintiff must  
8 “prove more than negligence but less than subjective intent—something akin to reckless  
9 disregard.”<sup>34</sup> The mere lack of due care is insufficient.<sup>35</sup>

10       Liberally construing the sixth amended complaint, I find that Ellis states a colorable  
11 Fourteenth Amendment claim for deliberate indifference against the doe defendants who  
12 withheld his medications; told Ellis to kill himself; and failed to respond to his hallucinations,  
13 seizures, and suicide attempts. Ellis’s bipolar schizophrenia and epilepsy are unquestionably  
14 severe. And despite knowing of these conditions, Ellis sufficiently alleges that the medical staff  
15 at CCDC failed to provide him proper treatment, actively delayed his treatments, and encouraged  
16 him to commit suicide. A reasonable person would have recognized the risks posed by that  
17 conduct and would not have behaved so. And Ellis reasonably alleges harm because he  
18 attempted suicide and experienced seizures that caused him to fall out of his bunk. But as  
19 before, Ellis still fails to provide the names of those who committed these acts, so I must dismiss  
20 his claims without prejudice.

21 \_\_\_\_\_  
<sup>32</sup> *Id.* at 1125.

22 <sup>33</sup> *Id.* (quoting *Castro v. Cnty. of L.A.*, 833 F.3d 1060, 1071 (9th Cir. 2016)).

23 <sup>34</sup> *Id.*

<sup>35</sup> *Id.*

1 **C. Leave to amend**

2 For Ellis's claims to proceed, he may amend his complaint to substitute the real names of  
3 these defendants. If Ellis does not know or remember those names, he must either review the  
4 medical records he currently possesses to identify those names or file a properly supported and  
5 complete motion for the Court to issue a Rule 45 subpoena duces tecum so that Ellis may obtain  
6 records that would have that information. If Ellis chooses to move for issuance of a Rule 45  
7 subpoena duces tecum, he must attach a copy of his proposed Rule 45 subpoena(s) to his motion,  
8 and that motion must clearly identify the documents that would have the information Ellis seeks  
9 and also explain why the documents and information would be available from the entity or  
10 person that is the target of the subpoena. Ellis is directed to carefully review Rule 45 of the  
11 Federal Rules of Civil Procedure before filing such a motion.

12 If Ellis chooses to file a seventh amended complaint with the true names of the doe  
13 defendants, he is advised that a seventh amended complaint would supersede and replace the  
14 sixth amended complaint, so the seventh amended complaint must be complete in itself.<sup>36</sup> He  
15 should file the seventh amended complaint on this court's approved prisoner-civil-rights form,  
16 and it must be entitled "Seventh Amended Complaint." Ellis must follow the instructions on the  
17 form. If Ellis does not amend the complaint to state a colorable claim against a named defendant  
18 by December 29, 2020, this case will be dismissed with prejudice.

19  
20  
21 \_\_\_\_\_  
22 <sup>36</sup> See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir.  
23 1989) (holding that "[t]he fact that a party was named in the original complaint is irrelevant; an amended pleading supersedes the original"); see also *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required to reallege such claims in a subsequent amended complaint to preserve them for appeal).

1 **Conclusion**

2 IT IS THEREFORE ORDERED that the application to proceed *in forma pauperis*  
3 without having to prepay the filing fee [ECF No. 1] is **GRANTED**.<sup>37</sup> Plaintiff need not pay an  
4 initial installment fee, prepay fees or costs or provide security for fees or costs, but he is still  
5 required to pay the full \$350 filing fee under 28 U.S.C. § 1915, as amended. This full filing fee  
6 will remain due and owing even if this case is dismissed or otherwise unsuccessful.

7 In order to ensure that plaintiff pays the full filing fee, IT IS FURTHER ORDERED that  
8 the Nevada Department of Corrections must pay to the Clerk of the United States District Court,  
9 District of Nevada, 20% of the preceding month's deposits to the account of Darral Ellis, #  
10 1206066 (in months that the account exceeds \$10.00) until the full \$350 filing fee has been paid  
11 for this action. The Clerk is directed to SEND a copy of this order to the attention of Chief of  
12 Inmate Services for the Nevada Department of Prisons, P.O. Box 7011, Carson City, NV 89702.

13 IT IS FURTHER ORDERED that the motion to substitute real names of defendants  
14 [ECF No. 25] is **DENIED as moot**.

15 IT IS FURTHER ORDERED that the sixth amended complaint [ECF No. 26] is the  
16 **operative complaint** and the Clerk of the Court is directed to send Ellis a copy of the sixth  
17 amended complaint.

18 IT IS FURTHER ORDERED that:

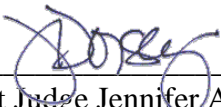
- 19
- 20 • The claims against Sheriff Lombardo are **DISMISSED** with prejudice and without  
21 leave to amend; and
  - 22 • The Fourteenth Amendment claims against the Doe defendants who allegedly

23 <sup>37</sup> This order granting *in forma pauperis* status does not extend to the issuance or service of subpoenas at government expense.



1 withheld Ellis's medications, told Ellis to do everyone a favor and kill himself, and  
2 failed to treat Ellis's seizures, hallucinations, and suicidal acts are dismissed  
3 without prejudice and with leave to amend.

4 IT IS FURTHER ORDERED that **the Clerk of the Court is directed to SEND** plaintiff  
5 the approved form and instructions for filing a § 1983 prisoner complaint. If plaintiff chooses to  
6 file a seventh amended complaint, he must use the approved form and he must write the words  
7 "Seventh Amended" above the words "Civil Rights Complaint" in the caption. **If plaintiff does**  
8 **not file an amended complaint stating a claim against a named defendant by December 29,**  
9 **2020, this action will be dismissed with prejudice.**

10   
11 \_\_\_\_\_  
12 U.S. District Judge Jennifer A. Dorsey  
13 November 2, 2020  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23