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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Jerry Castro Garza,  
10 Plaintiff,

No. CV 19-05190-PHX-JAT (ESW)

11 v.

**ORDER**

12 Officer CS516, et al.,  
13 Defendants.  
14

15 Plaintiff Jerry Castro Garza, who is confined in the Arizona State Prison Complex-  
16 Lewis, in Buckeye, Arizona, filed a pro se civil rights Complaint pursuant to 42 U.S.C.  
17 § 1983 (Doc. 1) and an Application to Proceed In Forma Pauperis (Doc. 2). The Court  
18 granted the Application and dismissed the Complaint with leave to amend (Doc. 6).  
19 Plaintiff subsequently filed a First Amended Complaint, which the Court dismissed with  
20 leave to amend.

21 Plaintiff filed a Second Amended Complaint (Doc. 18) followed by a Notice (Doc.  
22 19) stating that a page had been missing from his Second Amended Complaint, Document  
23 Number 18, and that he filed another Second Amended Complaint including the missing  
24 page (Doc. 20). The Court will dismiss the Second Amended Complaint, Doc. 20, and this  
25 case.

26 **I. Statutory Screening of Prisoner Complaints**

27 The Court is required to screen complaints brought by prisoners seeking relief  
28 against a governmental entity or an officer or an employee of a governmental entity. 28

1 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff  
2 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which  
3 relief may be granted, or that seek monetary relief from a defendant who is immune from  
4 such relief. 28 U.S.C. § 1915A(b)(1)-(2).

5 A pleading must contain a “short and plain statement of the claim *showing* that the  
6 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does  
7 not demand detailed factual allegations, “it demands more than an unadorned, the-  
8 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
9 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
10 conclusory statements, do not suffice.” *Id.*

11 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
12 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,  
13 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content  
14 that allows the court to draw the reasonable inference that the defendant is liable for the  
15 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for  
16 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial  
17 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual  
18 allegations may be consistent with a constitutional claim, a court must assess whether there  
19 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

20 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts  
21 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342  
22 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent  
23 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551  
24 U.S. 89, 94 (2007) (per curiam)).

## 25 **II. Second Amended Complaint**

26 In his one-count Second Amended Complaint, Plaintiff alleges a violation of his  
27 right to constitutionally adequate medical care while he was confined in a Maricopa County  
28 Jail. Plaintiff sues the following employees of Maricopa County Correctional Health

1 Services (CHS): Nurses Veronica CS 516, Kathy, Rosie, Stacy, and Grace #1101; and an  
2 unknown healthcare provider, Jane Doe; who all worked at the Fourth Avenue Jail.  
3 Plaintiff seeks compensatory and punitive relief.

4 Plaintiff alleges the following facts in his Second Amended Complaint:

5 On July 13, 2019, Nurse Veronica, a medication nurse, came to Plaintiff's pod to  
6 dispense medications. Plaintiff was to receive Motrin for back pain. CHS Standard  
7 Operating Procedures set forth procedures to be taken by medication nurses to verify that  
8 the correct medications were given to the correct prisoners. Nurse Veronica failed to  
9 follow those steps when she came to Plaintiff's cell; she gave him medication and ordered  
10 him to take "them." Nurse Veronica went to the next cell, housing Inmate Anaya, and  
11 handed Anaya what was supposed to be Anaya's medication, Tegretol, which is used to  
12 treat seizures, bipolar disorder, and anxiety. Anaya, not recognizing the medication, asked  
13 Nurse Veronica where his medication was. In response, Nurse Veronica said that she had  
14 given it to Plaintiff.

15 Plaintiff subsequently began to have stomach pain and told a pod officer. After 30-  
16 45 minutes, Plaintiff was escorted to medical. In medical, Plaintiff told Nurse Rosie that  
17 Nurse Veronica had given him Anaya's medication. Plaintiff asked Rosie to admit him to  
18 the hospital because he feared that he might die. Nurses Rosie and Kathy "disregarded"  
19 him and sent him back to his cell in a wheelchair. According to Plaintiff, they failed to  
20 provide adequate medical care before clearing him.

21 About ten minutes after being returned to his cell, Plaintiff started to feel dizzy. He  
22 pressed the emergency button and asked officers to alert medical again. Before medical  
23 arrived at his cell, Plaintiff collapsed and hit his head; he came to in a pool of blood.

24 Plaintiff was again taken to medical. As Nurse Kathy cleaned the blood from his  
25 face, Plaintiff told her that he had been given the wrong medication, which was causing  
26 adverse reactions, and told her that he feared for his life. At some point, Plaintiff also told  
27 Nurse Stacy about the error and that he feared for his life and asked to be taken to an  
28 emergency room. Plaintiff was again "disregarded" and returned to his cell.

1 About 30 minutes after being returned to his cell the second time, Plaintiff began  
2 vomiting and suffering from diarrhea. Plaintiff passed out from a seizure and was found  
3 by an officer, who took him to medical for a third time. Plaintiff informed Nurse Grace  
4 that the medication he had been given was causing him to collapse and have seizures.  
5 Nurse Grace said that it was Plaintiff's fault for taking the wrong medication and sent him  
6 back to his cell without treatment.

7 According to Plaintiff, Defendant Doe, the unknown provider, failed to provide  
8 adequate medical care by directing other staff not to take Plaintiff to the hospital. Plaintiff  
9 contends that none of the Defendants provided constitutionally adequate medical care.

### 10 **III. Failure to State a Claim**

11 To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants  
12 (2) under color of state law (3) deprived him of federal rights, privileges or immunities and  
13 (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th Cir.  
14 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm'n*, 42 F.3d 1278,  
15 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific injury  
16 as a result of the conduct of a particular defendant and he must allege an affirmative link  
17 between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-  
18 72, 377 (1976).

19 Although pro se pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,  
20 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*  
21 *v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a liberal interpretation of a  
22 civil rights complaint may not supply essential elements of the claim that were not initially  
23 pled. *Id.*

24 Plaintiff alleges that he was provided another prisoner's medication, that he was  
25 denied adequate medical care in response, and that he suffered further injury from the  
26 effects of the medication. The Ninth Circuit Court of Appeals has held that "claims for  
27 violations of the right to adequate medical care 'brought by pretrial detainees against  
28 individual defendants under the Fourteenth Amendment' must be evaluated under an

1 objective deliberate indifference standard.” *Gordon v. County of Orange*, 888 F.3d 1118,  
2 1124-25 (9th Cir. 2018) (quoting *Castro v. County of Los Angeles*, 833 F.3d 1060, 1070  
3 (9th Cir. 2016)). To state a medical care claim, a pretrial detainee must show

4 (i) the defendant made an intentional decision with respect to the conditions  
5 under which the plaintiff was confined; (ii) those conditions put the plaintiff  
6 at substantial risk of suffering serious harm; (iii) the defendant did not take  
7 reasonable available measures to abate that risk, even though a reasonable  
8 official in the circumstances would have appreciated the high degree of risk  
9 involved—making the consequences of the defendant’s conduct obvious;  
and (iv) by not taking such measures, the defendant caused the plaintiff’s  
injuries.

10 *Id.* at 1125. “With respect to the third element, the defendant’s conduct must be objectively  
11 unreasonable, a test that will necessarily ‘turn[] on the facts and circumstances of each  
12 particular case.’” *Castro*, 833 F.3d at 1071 (quoting *Kingsley v. Hendrickson*, 576 U.S.  
13 389, 397 (2015), and *Graham v. Connor*, 490 U.S. 386, 396 (1989)).

14 The “‘mere lack of due care by a state official’ does not deprive an individual of  
15 life, liberty, or property under the Fourteenth Amendment.” *Castro*, 833 F.3d at 1071  
16 (quoting *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)). A plaintiff must “prove more  
17 than negligence but less than subjective intent—something akin to reckless disregard.” *Id.*  
18 A mere delay in medical care, without more, is insufficient to state a claim against prison  
19 officials for deliberate indifference. *See Shapley v. Nev. Bd. of State Prison Comm’rs*, 766  
20 F.2d 404, 407 (9th Cir. 1985).

21 Plaintiff alleges that Nurse Veronica failed to comply with CHS procedures by  
22 verifying that she was giving him the medication intended for him. While Plaintiff alleges  
23 that Nurse Veronica failed to exercise due care, he fails to allege facts to support that Nurse  
24 Veronica acted with reckless disregard to a known substantial risk of serious harm to  
25 Plaintiff. Instead, Plaintiff’s allegations reflect a single incidence of negligent conduct.  
26 That is not sufficient to state a claim against Nurse Veronica. Accordingly, his claim  
27 against her will be dismissed.

28 After being taken to medical 30 or 45 minutes after his stomach began to hurt, and

1 after an unknown period after taking the medication, Plaintiff allegedly told Nurses Kathy,  
2 Rosie, and Stacy that he had been given the wrong medication and asked to be taken to the  
3 hospital or emergency room. According to Plaintiff, Defendant Doe told CHS staff not to  
4 send Plaintiff to the hospital, and he was subsequently returned by wheelchair to his cell,  
5 where he later passed out and hit his head. He was again taken to medical, where Nurse  
6 Kathy cleaned his face but failed to order a transfer to the hospital and Nurses Kathy, Rosie,  
7 and Stacy allegedly “disregarded” him.

8 Plaintiff’s disagreement with Defendant Doe’s determination that hospitalization  
9 was unnecessary, absent more, is insufficient to state a claim against Doe. Plaintiff does  
10 not allege sufficient facts to show that Defendant Doe was aware of any facts to suggest  
11 that Plaintiff would face a substantial risk of serious harm if not treated at a hospital.  
12 Accordingly, Plaintiff fails to state a claim against Defendant Doe and she will be  
13 dismissed.

14 Plaintiff’s allegations against Nurses Kathy, Rosie, and Stacy are, likewise, too  
15 vague and conclusory to state a claim. Their compliance with Defendant Doe’s  
16 determination that hospitalization was unnecessary does not support that they acted with  
17 reckless disregard to a known *substantial* risk of serious harm to Plaintiff on that basis.  
18 Plaintiff does not allege that these Defendants failed to treat him altogether, and it is not  
19 clear from the Second Amended Complaint how long Plaintiff remained in medical or what  
20 forms of treatment (other than face-cleaning) that he received while there. Plaintiff has  
21 likewise failed to adequately allege that Nurses Kathy, Rosie, and Stacy knew, or should  
22 have known, Plaintiff might faint as a result of taking the medication, much less that he  
23 would hit his head. Accordingly, Plaintiff’s allegations against Kathie, Rosie, and Stacy  
24 also fail to state a claim.

25 Plaintiff alleges that Nurse Grace failed to provide adequate medical care by failing  
26 to order his transfer to an emergency room following Plaintiff’s third return to medical  
27 after suffering further symptoms: Plaintiff does not allege that he informed Grace, or  
28 anyone else, about those symptoms. Otherwise, as discussed above, Defendant Doe

1 determined that hospitalization was unnecessary. Plaintiff fails to allege facts to support  
2 that Nurse Grace acted with reckless disregard to a substantial risk of serious harm to  
3 Plaintiff in treating him. Accordingly, Plaintiff fails to state a claim against Nurse Grace.

4 **IV. Dismissal without Leave to Amend**

5 Because Plaintiff has failed to state a claim in his Second Amended Complaint, the  
6 Court will dismiss his Second Amended Complaint. “Leave to amend need not be given  
7 if a complaint, as amended, is subject to dismissal.” *Moore v. Kayport Package Express,*  
8 *Inc.*, 885 F.2d 531, 538 (9th Cir. 1989). The Court’s discretion to deny leave to amend is  
9 particularly broad where Plaintiff has previously been permitted to amend his complaint.  
10 *Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996).  
11 Repeated failure to cure deficiencies is one of the factors to be considered in deciding  
12 whether justice requires granting leave to amend. *Moore*, 885 F.2d at 538.

13 Plaintiff has made three efforts at crafting a viable complaint and appears unable to  
14 do so despite specific instructions from the Court. The Court finds that further  
15 opportunities to amend would be futile. Therefore, the Court, in its discretion, will dismiss  
16 Plaintiff’s Second Amended Complaint without leave to amend.

17 **IT IS ORDERED:**

18 (1) Plaintiff’s Second Amended Complaint (Doc. 20) and this action are  
19 **dismissed** for failure to state a claim, and the Clerk of Court must enter judgment  
20 accordingly.

21 (2) The Clerk of Court must make an entry on the docket stating that the  
22 dismissal for failure to state a claim may count as a “strike” under 28 U.S.C. § 1915(g).

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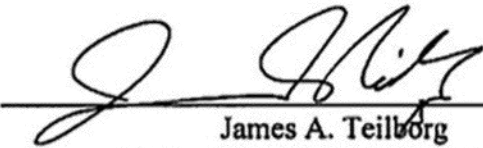
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1           (3)     The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3)  
2 and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal  
3 of this decision would be taken in good faith and finds Plaintiff may appeal in forma  
4 pauperis.

5           Dated this 9th day of October, 2020.

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James A. Teilborg  
Senior United States District Judge