

1 whether the action is frivolous or malicious; or fails to state a claim on which
2 relief might be granted; or seeks monetary relief against a defendant who is
3 immune from such relief. For the reasons set forth below, the Complaint is
4 dismissed with leave to amend.

5 II.

6 SUMMARY OF PLAINTIFF'S ALLEGATIONS

7 The following represents the totality of the factual allegations Plaintiff
8 offers to support his claims (Complaint at 5):

9 [Plaintiff] was racially profiled on different occasions and
10 subjective to unlawful detainment in segregation [without]
11 just cause. [Plaintiff] was subjected to cruel and unusual
12 punishment and deliberate indifference, pain and suffering,
13 and mental anguish and denied proper and adequate law
14 library access and phone calls[,] as well as visitation.

15 III.

16 STANDARD OF REVIEW

17 A complaint may be dismissed as a matter of law for failure to state a
18 claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient
19 facts under a cognizable legal theory. See Balistreri v. Pacifica Police Dep't,
20 901 F.2d 696, 699 (9th Cir. 1990). In determining whether the complaint states
21 a claim, its factual allegations must be taken as true and construed in the light
22 most favorable to the plaintiff. See Love v. United States, 915 F.2d 1242, 1245
23 (9th Cir. 1989). Courts construe the allegations of pro se complaints liberally.
24 Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam); see also Hebbe v.
25 Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (as amended). However, “a liberal
26 interpretation of a civil rights complaint may not supply essential elements of
27 the claim that were not initially pled.” Bruns v. Nat'l Credit Union Admin.,
28 122 F.3d 1251, 1257 (9th Cir. 1997) (quotation omitted).

1 A “plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to
2 relief’ requires more than labels and conclusions, and a formulaic recitation of
3 the elements of a cause of action will not do. . . . Factual allegations must be
4 enough to raise a right to relief above the speculative level . . . on the
5 assumption that all the allegations in the complaint are true (even if doubtful in
6 fact).” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal
7 citations omitted); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Thus, a
8 plaintiff must allege a minimum factual and legal basis for each claim that is
9 sufficient to give each defendant fair notice of what the plaintiff’s claims are
10 and the grounds upon which they rest. See, e.g., Brazil v. United States Dep’t
11 of the Navy, 66 F.3d 193, 199 (9th Cir. 1995); McKeever v. Block, 932 F.2d
12 795, 798 (9th Cir. 1991). Moreover, failure to comply with Rule 8(a) of the
13 Federal Rules of Civil Procedure constitutes an independent basis for dismissal
14 of a complaint even if the claims in a complaint are not found to be wholly
15 without merit. See McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996);
16 Nevijel v. Northcoast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

17 If the Court finds that a complaint should be dismissed for failure to state
18 a claim, the Court has discretion to dismiss with or without leave to amend.
19 Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave to
20 amend should be granted if it appears possible that the defects in the complaint
21 could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see also
22 Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that “[a] pro
23 se litigant must be given leave to amend his or her complaint, and some notice
24 of its deficiencies, unless it is absolutely clear that the deficiencies of the
25 complaint could not be cured by amendment”). However, if, after careful
26 consideration, it is clear that a complaint cannot be cured by amendment, the
27 Court may dismiss without leave to amend. Cato, 70 F.3d at 1105-06; see, e.g.,
28 Chaset v. Flee/Skybox Int’l, 300 F.3d 1083, 1088 (9th Cir. 2002) (holding that

1 “there is no need to prolong the litigation by permitting further amendment”
2 where the “basic flaw” in the pleading cannot be cured by amendment).

3 **IV.**

4 **DISCUSSION**

5 Plaintiff alleges violations of his: First Amendment right against
6 retaliation and right to file grievances; Fourteenth Amendment right to due
7 process and equal protection against racial discrimination; Eighth Amendment
8 right against cruel and unusual punishment, including deliberate indifference
9 and inadequate access to medical care;¹ and right to access the courts,
10 stemming from a denial of access to the law library. See Complaint at 5.

11 In order to state a claim for a civil rights violation under Section 1983, a
12 plaintiff must allege that a particular defendant, acting under color of state law,
13 deprived plaintiff of a right guaranteed under the U.S. Constitution or a federal
14 statute. 42 U.S.C. § 1983; see West v. Atkins, 487 U.S. 42, 48 (1988). As
15 noted, Rule 8(a)(2) requires that a complaint contain “‘a short and plain
16 statement of the claim showing that the pleader is entitled to relief,’ in order to
17 ‘give the defendant fair notice of what the . . . claim is and the grounds upon
18 which it rests.’” Twombly, 550 U.S. 544, 555 (2007). Rule 8(e)(1) directs that
19 “[e]ach averment of a pleading shall be simple, concise, and direct.” A
20 complaint violates Rule 8 if a defendant would have difficulty responding to
21 the complaint. Cafasso, U.S. ex rel. v. General Dynamics C4 Sys., Inc., 637
22 F.3d 1047, 1059 (9th Cir. 2011).

23 A complaint that fails to comply with Rule 8 may properly be dismissed
24 notwithstanding the existence of a viable cause of action. Hearns v. San

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26 ¹Claims for failure to protect and excessive force by pretrial detainees are
27 governed by an objective standard under Fourteenth Amendment Due Process
28 Clause, not the Eighth Amendment Cruel and Unusual Punishment Clause. Castro
v. County of Los Angeles, 833 F.3d 1060, 1067-68 (9th Cir. 2016) (en banc) (citing
Kingsley v. Hendrickson, 135 S. Ct. 2466 (2015)), cert. denied, 137 S. Ct. 831 (2017).

1 Bernardino Police Department, 530 F.3d 1124, 1129-30 (9th Cir. 2008). “The
2 propriety of dismissal for failure to comply with Rule 8 does not depend on
3 whether the complaint is wholly without merit. . . . Rule 8(e), requiring each
4 averment of a pleading to be ‘simple, concise, and direct,’ applies to good
5 claims as well as bad, and is a basis for dismissal independent of Rule
6 12(b)(6).” McHenry v. Penne, 84 F.3d 1172, 1179-80 (9th Cir. 1996)

7 Here, the entirety of the factual allegations in the Complaint consist of a
8 single paragraph with conclusory statements that lack any factual support to
9 enable the Court to determine that Plaintiff may be entitled to relief. For
10 example, Plaintiff alleges he was “racially profiled on different occasions and
11 subjected to unlawful detainment in segregation [without] justice” but has
12 alleged no facts in support of this contention, such as who profiled him, when
13 it occurred, and what adverse consequences were suffered. Each theory
14 referenced in the Complaint is similarly deficient. Nor does the Complaint
15 allege what damages, if any, Plaintiff suffered as a result of the alleged
16 constitutional violations, apart from “mental anguish.”

17 Additionally, although the Complaint names three defendants, it does
18 not allege a single act by any particular defendant, much less an act rising to
19 the level of a constitutional violation. “[A] public official is liable under § 1983
20 only if he causes the plaintiff to be subjected to a deprivation of his
21 constitutional rights.” Baker v. McCollan, 443 U.S. 137, 142 (1979). “[T]he
22 plaintiff must . . . demonstrate that the defendant’s conduct was the actionable
23 cause of the claimed injury.” Harper v. City of Los Angeles, 533 F.3d 1010,
24 1026 (9th Cir. 2008).

25 As described, Rule 8(a) requires the pleader to provide not only a factual
26 and legal basis for each claim, but to survive a 12(b)(6) motion, the complaint
27 must also provide the grounds for relief “that raise a right to relief above the
28 speculative level.” See Bell Atlantic Corp., 550 U.S. at 555. The allegations

1 must also be sufficient to permit defendants to respond to the allegations
2 against them. The Complaint fails on both counts and is subject to dismissal.

3 V.

4 **CONCLUSION**

5 Based upon the deficiencies identified above, the Complaint is subject to
6 dismissal. Because it is not absolutely clear that Plaintiff's pleading deficiencies
7 cannot be cured by amendment, such dismissal will be with leave to amend.

8 Accordingly, if Plaintiff still desires to pursue his claims, he shall file a
9 First Amended Complaint within thirty-five (35) days of the date of this Order
10 remedying the deficiencies discussed above. Plaintiff's Amended Complaint
11 should: bear the docket number assigned in this case; be labeled "First
12 Amended Complaint"; be complete in and of itself without reference to the
13 prior complaints or any other pleading, attachment or document; identify each
14 separate claim separately and include specific factual allegations as to each
15 defendant for each claim brought, including descriptions of what each
16 defendant did or failed to do that Plaintiff alleges supports liability for each
17 claim; and specify the damage or injury suffered by Plaintiff as a result.

18 The Clerk is directed to send Plaintiff a blank Central District civil rights
19 complaint form, which Plaintiff is encouraged to utilize.

20 **Plaintiff is admonished that, if he fails to timely file a First Amended**
21 **Complaint in compliance with the Order, the Court will recommend that**
22 **this action be dismissed for failure to diligently prosecute.**

23
24 Dated: November 20, 2017

25 
26 **JOHN D. EARLY**
27 United States Magistrate Judge
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