

1 privileges, or immunities secured by the Constitution and laws of the United States.”
2 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
3 Section 1983 is not itself a source of substantive rights, but merely provides a method for
4 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
5 (1989).

6 To state a claim under § 1983, a plaintiff must allege two essential elements:
7 (1) that a right secured by the Constitution or laws of the United States was violated and
8 (2) that the alleged violation was committed by a person acting under the color of state
9 law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d
10 1243, 1245 (9th Cir. 1987).

11 A complaint must contain “a short and plain statement of the claim showing that
12 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
13 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
14 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
15 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
16 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief
17 that is plausible on its face.” Id. Facial plausibility demands more than the mere
18 possibility that a defendant committed misconduct and, while factual allegations are
19 accepted as true, legal conclusions are not. Id. at 677-78.

20 **III. Plaintiff’s Allegations**

21 Plaintiff is detained at Coalinga State Hospital (“CSH”), where the acts giving rise
22 to his complaint occurred. He names Dr. Sanjeev Batra as the sole defendant.

23 His allegations may be summarized essentially as follows.

24 On December 6, 2010 Defendant Batra recommended that Plaintiff undergo an
25 angiogram. Plaintiff refused. Batra retaliated by keeping Plaintiff in the medical unit. He
26 wrote false medical information in Plaintiff’s chart.
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1 Plaintiff sought a second opinion and, on January 30, 2017, was transferred to the
2 Twin City Medical Center in Templeton, California. There, Plaintiff was treated for
3 pneumonia. Additional tests were run on Plaintiff's heart by Dr. Gordon, a resident, and
4 Dr. Twicks, a cardiologist. The doctors determined that Plaintiff's heart was okay and
5 that an angiogram was not needed.

6 Plaintiff does not specify any relief other than to have his original complaint
7 reinstated.

8 **IV. Analysis**

9 **A. Magistrate Judge Jurisdiction**

10 Plaintiff complains that the undersigned does not have authority to screen his
11 complaint.

12 "Upon the consent of the parties," a magistrate judge "may conduct any or all
13 proceedings in a jury or nonjury civil matter and order the entry of judgment in the case."
14 28 U.S.C. § 636(c)(1). Here, Plaintiff has consented (ECF No. 4), but Defendant Batra
15 has not been served or appeared. Batra, therefore is not yet party to this action. See
16 Travelers Cas. & Sur. Co. of Am. v. Brenneke, 551 F.3d 1132, 1135 (9th Cir. 2009) ("A
17 federal court is without personal jurisdiction over a defendant unless the defendant has
18 been served in accordance with Fed. R. Civ. P. 4."). Accordingly, all those who are
19 presently parties have consented pursuant to § 636(c)(1) and the undersigned
20 Magistrate Judge has jurisdiction to dismiss this matter. See Wilhelm v. Rotman, 680
21 F.3d 1113, 1119-21 (9th Cir. 2012); see also Williams v. Gen. Elec. Capital Auto Lease,
22 Inc., 159 F.3d 266, 269 (7th Cir. 1998) ("[T]he lack of consent of someone who is not a
23 party to an action does not deprive the magistrate judge of jurisdiction."); Williams v. Los
24 Angeles Superior Court, No. 14-4165, 2014 WL 2533804, *4 n.5 (C.D. Cal. June 4,
25 2014) ("When, as here, the petitioner has consented to magistrate judge jurisdiction and
26 the respondent has neither been served with process nor appeared in the action, a
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1 magistrate judge may properly exercise consent jurisdiction over the case pursuant to
2 Section 636(c)(1), including by ordering that dismissal of the action is warranted.”).

3 Plaintiff’s request to reinstate his prior complaint on this basis will be denied.

4 **B. Rule 8**

5 Federal Rule of Civil Procedure 8(a)(3) requires that a pleading contain “a
6 demand for the relief sought.” Plaintiff’s complaint does not comply with this requirement.

7 **C. Retaliation**

8 “Within the prison context, a viable claim of First Amendment retaliation entails
9 five basic elements: (1) An assertion that a state actor took some adverse action against
10 an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4)
11 chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not
12 reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559,
13 567-68 (9th Cir. 2005). Although Plaintiff is not a prisoner, this same standard has been
14 extended to civil detainees. E.g., Williams v. Madrid, 609 F. App’x 421 (9th Cir. 2015).

15 The second element of a prisoner retaliation claim focuses on causation and
16 motive. See Brodheim v. Cry, 584 F.3d 1262, 1271 (9th Cir. 2009). A plaintiff must show
17 that his protected conduct was a “‘substantial’ or ‘motivating’ factor behind the defenant’s
18 conduct.” Id. (quoting Sorrano’s Gasco. Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir.
19 1989). Although it can be difficult to establish the motive or intent of the defendant, a
20 plaintiff may rely on circumstantial evidence. Bruce v. Ylst, 351 F.3d 1283, 1288-89 (9th
21 Cir. 2003) (finding that a prisoner establishes a triable issue of fact regarding prison
22 officials’ retaliatory motives by raising issues of suspect timing, evidence, and
23 statements); Hines v. Gomez, 108 F.3d 265, 267-68 (9th Cir. 1997); Pratt v. Rowland, 65
24 F.3d 802, 808 (9th Cir. 1995) (“timing can properly be considered as circumstantial
25 evidence of retaliatory intent”).

26 The third prong can be satisfied by various activities. Filing a grievance is a
27 protected action under the First Amendment. Valandingham v. Bojorquez, 866 F.2d
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1 1135, 1138 (9th Cir. 1989). Pursuing a civil rights litigation similarly is protected under
2 the First Amendment. Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985).

3 With respect to the fourth prong, “[it] would be unjust to allow a defendant to
4 escape liability for a First Amendment violation merely because an unusually determined
5 plaintiff persists in his protected activity” Mendocino Env’tl. Ctr. v. Mendocino Cnty.,
6 192 F.3d 1283, 1300 (9th Cir. 1999). The correct inquiry is to determine whether an
7 official’s acts would chill or silence a person of ordinary firmness from future First
8 Amendment activities. Rhodes, 408 F.3d at 568-69 (citing Mendocino Env’tl. Ctr., 192
9 F.3d at 1300).

10 With respect to the fifth prong, a prisoner must affirmatively show that “the prison
11 authorities’ retaliatory action did not advance legitimate goals of the correctional
12 institution or was not tailored narrowly enough to achieve such goals.” Rizzo, 778 F.2d at
13 532.

14 Plaintiff claims he was retaliated against for refusing an angiogram, bringing this
15 action, and complaining about Batra to other staff. Plaintiff’s bringing of this action
16 cannot serve as the basis of his retaliation claim because it occurred after the alleged
17 retaliation. Thus, the alleged retaliation could not have been motivated by his bringing
18 the instant action. Plaintiff does, however, have a constitutional right to refuse medical
19 care, Cruzan by Cruzan v. Dir., Mo. Dept. of Health, 497 U.S. 261, 278 (1990) (A
20 “competent person has a constitutionally protected liberty interest in refusing unwanted
21 medical treatment.”), and such refusal preceded Defendant’s decision to hold Plaintiff in
22 the medical unit.

23 Nonetheless, the facts alleged do not suggest that Defendant was motivated by
24 retaliatory animus, rather than legitimate medical concerns. On its face, the decision to
25 house Plaintiff in the medical unit pending an angiogram has a logical relationship to
26 Plaintiff’s health and safety. Furthermore, additional physicians, including a cardiologist,
27 determined that further testing of Plaintiff’s heart was warranted. Plaintiff has presented
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1 no facts to suggest that Batra was motivated by anything other than medical concerns in
2 making his decision. Absent further facts to suggest otherwise, Plaintiff fails to state a
3 claim.

4 Plaintiff previously was advised on this standard but failed to cure noted
5 deficiencies. Indeed, his amendment only serves to further indicate that Batra was not
6 motivated by retaliation. Further leave to amend appears futile and will be denied.

7 **D. Punitive Conditions of Confinement**

8 Plaintiff claims he is being punished for refusing an angiogram.

9 Certain rights of detainees, like those of convicted prisoners, “may be limited or
10 retracted if required to ‘maintain institutional security and preserve internal order and
11 discipline.’” Pierce v. County of Orange, 526 F.3d 1190, 1209 (9th Cir. 2008). However,
12 a civil detainee “cannot be subjected to conditions that ‘amount to punishment.’” Jones v.
13 Blanas, 393 F.3d 918, 931-32 (9th Cir. 2004) (explaining that conditions of confinement
14 claims brought by civil detainees are evaluated under the “more protective” Fourteenth
15 Amendment substantive due process standard, and that civil detainees are entitled to
16 less restrictive treatment than criminally convicted prisoners) (quoting Bell v. Wolfish,
17 441 U.S. 520, 535 (1979)).

18 Punitive conditions may be shown (1) where the challenged restrictions are
19 expressly intended to punish; or (2) where the challenged restrictions serve an
20 alternative non-punitive purposes but are nonetheless excessive in relation to the
21 alternative purpose, or are employed to achieve objectives that could be accomplished
22 by alternative and less harsh methods. Id. Legitimate, non-punitive government interests
23 include ensuring a detainee's presence at trial, maintaining jail security, and effective
24 management of a detention facility. Id.

25 Once again, the facts alleged do not suggest any punitive purpose in Defendant's
26 decision to house Plaintiff on the medical unit pending an angiogram. Plaintiff's mere
27 suggestion that an angiogram was unnecessary is insufficient to suggest a punitive
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1 purpose, particularly in light of the additional testing performed by other physicians.
2 Plaintiff fails to state a claim regarding unconstitutional punishment. Leave to amend will
3 be denied.

4 **E. Disciplinary Actions**

5 Plaintiff states he was subjected to discipline without due process. However, the
6 facts alleged do not indicate that his continued placement in the medical unit is a result
7 of disciplinary action for violation of institutional rules or regulations. Plaintiff's conclusory
8 allegation that his retention on the medical unit was disciplinary is insufficient to state a
9 claim.

10 Plaintiff previously was advised of the legal standards applicable to such a claim
11 and has failed to cure noted defects. Further leave to amend appears futile and will be
12 denied.

13 **V. Conclusion and Order**

14 Plaintiff's first amended complaint does not state a cognizable claim for relief. He
15 previously was advised of pleading deficiencies and afforded the opportunity to correct
16 them. He failed to do so. Any further leave to amend reasonably appears futile and will
17 be denied.

18 Accordingly, it is HEREBY ORDERED that:

- 19 1. The action is DISMISSED without leave to amend for failure to state a
20 claim; and
21 2. The Clerk of the Court shall terminate all pending motions and close the
22 case.

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24 IT IS SO ORDERED.

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26 Dated: March 6, 2017

27 /s/ Michael J. Seng
28 UNITED STATES MAGISTRATE JUDGE