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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

TRINIDAD HORTA,  
  
Plaintiff,  
  
v.  
  
STATE OF CALIFORNIA, et al,  
  
Defendants.

Case No. 2:08-CV-01436-LDG

**ORDER**

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. The court must review complaints brought by prisoners against government entities. 28 U.S.C. § 1915A(a). The complaint should be dismissed if it is frivolous or if it fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may therefore dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inarticulately pleaded, has an arguable legal and factual basis. See Jackson v. Ariz., 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

A complaint requires only a short and plain statement showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). However, a complaint must contain more than a “formalistic recitation of the elements of a cause of action.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). The “factual allegations must be enough to raise a right to relief above the speculative level.” Id. In reviewing a complaint under this standard, the court must accept as true

1 the allegations of the complaint in question. Hosp. Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740  
2 (1976). It also must construe the pleadings in the light most favorable to the plaintiff, and resolve  
3 all doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

4 Mr. Horta seeks relief for the use of excessive physical force and unwanted medical  
5 treatment administered while he was in custody of various institutions in Nevada and California. A  
6 plaintiff can seek relief under the Civil Rights Act, which provides:

7 Every person who, under color of [state law] . . . subjects, or causes to be subjected,  
8 any citizen of the United States . . . to the deprivation of any rights, privileges, or  
9 immunities secured by the Constitution . . . shall be liable to the party injured in an  
10 action at law, suit in equity, or other proper proceeding for redress.

11 42 U.S.C. § 1983. Whether some conduct violates the Act depends on whether the person acted  
12 “under color of law” and whether the conduct deprived the plaintiff of a constitutional right. Shah  
13 v. Cnty. of L.A., 797 F.2d 743, 746 (9th Cir. 1986).

14 The Eighth Amendment and the Due Process Clause are the constitutional rights relevant  
15 to Mr. Horta’s Complaint, but his allegations are too vague to support a colorable claim under  
16 either of those provisions. The Eighth Amendment prohibits “cruel and unusual punishment.” U.S.  
17 Const. amend. VIII. “After incarceration, only the ‘unnecessary and wanton infliction of pain’ . . .  
18 constitutes cruel and unusual punishment.” Wilson v. Seiter, 501 U.S. 294, 298 (1991). For  
19 complaints alleging “excessive physical force” by prison officials in violation of the Eighth  
20 Amendment, “the core judicial inquiry is . . . whether force was applied in a good-faith effort to  
21 maintain or restore discipline, or maliciously and sadistically to cause harm.” Hudson v.  
22 McMillian, 503 U.S. 1, 6-7 (1992). The factors that determine whether the force was “excessive”  
23 are “the extent of the injury . . . , the need for the application of force, the relationship between that  
24 need and the amount of force used, the threat reasonably perceived by the responsible officials, and  
25 any efforts made to temper the severity of a forceful response.” Id. at 7. Mr. Horta’s statement that  
26 he was slammed on the ground while being searched is insufficient to support a claim because it  
does not provide any other information about the circumstances that would indicate that the force

1 used was excessive. Although the court construes the facts in a light most favorable to the plaintiff,  
2 the court would have to speculate broadly about the nature of this event in order to conclude that  
3 the alleged force was excessive. The Complaint itself does not support a cause of action.

4 Mr. Horta's allegation that he received medical treatment without his permission does not  
5 indicate that his Due Process rights were violated. A prisoner is not afforded the same liberties as a  
6 free man, and so his liberty is infringed only when his treatment is harsher than what is normal for  
7 prison life. Sandin v. Connor, 515 U.S. 472, 484 (1995). However, imposing a particularly  
8 invasive or unnecessary medical treatment on a prisoner can constitute a violation of liberty. See  
9 Runnels v. Rosendale, 499 F.2d 733, 735 (9th Cir. 1974) ("The right to be secure in one's person  
10 could be violated by the substantial threat to physical security necessarily involved in major  
11 surgery, when such surgery is neither consented to nor required for purposes of imprisonment or  
12 security"). But less invasive treatments that otherwise infringe on an inmate's liberty interests are  
13 permissible if they are "reasonably related to legitimate penological interests." Washington v.  
14 Harper, 494 U.S. 210, 223 (1990) (quoting Turner v. Safley, 482 U.S. 78 (1987)). In Harper the  
15 Court held that a mentally ill prisoner could be forced to take antipsychotic drugs if doing so  
16 would serve the interests of the prisoner and the State. Id., 494 U.S. at 222-23. There is no  
17 indication in Mr. Horta's Complaint that the procedures he endured while incarcerated in Fresno  
18 and Sacramento were overly invasive or unnecessary. Mr. Horta describes receiving medication  
19 without his permission, but he does not mention any adverse or unwanted effects from the  
20 treatment. There is also no reason to believe that the treatment was not intended to benefit him or  
21 serve some penological purpose.

22 The Complaint does not make clear whether Mr. Horta was incarcerated at the time he  
23 received treatment in the unnamed hospital in Nevada. Without further information about these  
24 circumstances, it is not possible to surmise whether his treatment constituted a violation of his  
25 liberty. Thus, taking all of the facts in the Complaint as true, Mr. Horta has not established that any  
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1 Due Process violation occurred.


2 If Mr. Horta chooses to amend his Complaint, he must demonstrate how the conditions  
3 complained of have resulted in a deprivation of his constitutional rights. See Ellis v. Cassidy, 625  
4 F.2d 227, 229 (9th Cir. 1980). To support an Eighth Amendment claim, he will need to allege facts  
5 sufficient to demonstrate that the physical force was unnecessary and wanton. To support a Due  
6 Process claim, he will need to demonstrate that his liberty was impaired beyond what is normal for  
7 prison life, or that the medical treatment was not reasonably related to penological interests.

8 Accordingly,

9 THE COURT HEREBY ORDERS that Plaintiff's Complaint (#1) is dismissed.

10 THE COURT FURTHER ORDERS that Plaintiff be granted thirty (30) days from the date  
11 of service of this order to file an amended complaint that complies with the requirements of the  
12 Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the  
13 amended complaint must bear the docket number assigned to this case and must be labeled  
14 "Amended Complaint"; failure to file an amended complaint in accordance with this order may  
15 result in dismissal.

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17 DATED this 14 day of June, 2011.

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20 Lloyd D. George  
21 United States District Judge

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