



1 II. Screening of Plaintiff's First Amended Complaint

2 A. Legal Standards for Screening Prisoner Civil Rights Complaint

3 The court is required to screen complaints brought by prisoners seeking relief against a  
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
6 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v.  
9 Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir.  
10 1984).

11 Rule 8 of the Federal Rules of Civil Procedure “requires only ‘a short and plain statement  
12 of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair  
13 notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic Corp. v.  
14 Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
15 “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it  
16 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v.  
17 Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly at 555). To survive dismissal for failure to  
18 state a claim, “a complaint must contain sufficient factual matter, accepted as true, to “state a  
19 claim to relief that is plausible on its face.” Iqbal at 678 (quoting Twombly at 570). “A claim  
20 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
21 reasonable inference that the defendant is liable for the misconduct alleged. The plausibility  
22 standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility  
23 that a defendant has acted unlawfully.” Id. (citing Twombly at 556). “Where a complaint pleads  
24 facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between  
25 possibility and plausibility of “entitlement to relief.””” Id. (quoting Twombly at 557).

26 “A document filed pro se is ‘to be liberally construed,’ and ‘a pro se complaint, however  
27 inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by  
28 lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quoting Estelle v. Gamble, 429 U.S. 97,

1 106 (1976) (internal quotation marks omitted)). See also Fed. R. Civ. P. 8(e) (“Pleadings shall be  
2 so construed as to do justice.”). Additionally, a pro se litigant is entitled to notice of the  
3 deficiencies in the complaint and an opportunity to amend, unless the complaint’s deficiencies  
4 cannot be cured by amendment. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

5 B. Plaintiff’s Allegations

6 By order filed September 18, 2017, this court granted plaintiff’s application to proceed in  
7 forma pauperis and dismissed the original complaint with leave to amend. See ECF No. 8. The  
8 original complaint challenged plaintiff’s medical care, physical therapy and medication to treat  
9 his chronic pain and mobility issues associated with his severe congenital spinal scoliosis.  
10 Plaintiff sought damages; immediate access to a TENS unit; and referral to a specialist for  
11 evaluation and treatment, including an MRI and assessment of plaintiff’s pain medications. The  
12 complaint named defendants Clark Kelso (the federal receiver overseeing CDCR’s medical care  
13 system), HDSP Warden Eliot Spearman, HDSP Chief Physician Lee, and HDSP physicians  
14 Griffith and Yusufzai. See ECF No. 1.

15 The court dismissed the original complaint for failure to state a cognizable claim for  
16 deliberate indifference to plaintiff’s serious medical needs,<sup>1</sup> and for failure to “link” pertinent  
17 factual allegations with the challenged conduct of specific defendants. See ECF No. 8. The court  
18 provided plaintiff guidance in stating a cognizable deliberate indifference claim against specific  
19 defendants, and dismissed defendant Clark Kelso for failure to state a claim.

20 In his FAC, filed October 12, 2017, plaintiff alleges one claim: “denied proper medical  
21 care.” ECF No. 11 at 3. Plaintiff again seeks monetary damages and injunctive relief, the latter  
22 including an MRI and referral to a specialist, and access to a TENS unit until he obtains an MRI.  
23 The FAC names defendants Spearman (HDSP Warden), Miranda (Physician Assistant) and Lee  
24 (Physician), but the factual allegations again reference defendants collectively as “they” or  
25 “them,” without identifying who denied plaintiff’s requests for stronger pain medications, access  
26 to a TENS unit, and/or referral to a specialist and for an MRI. The undersigned’s review of  
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28 <sup>1</sup> The complaint alleged only in general terms that plaintiff’s care and treatment was deficient.

1 plaintiff's exhibits (see ECF No. 1 at 4-33, and ECF No. 11 at 5-9) fails to provide the requisite  
2 linkage between plaintiff's factual allegations and the conduct of the identified defendants. The  
3 only link appears to be a First Level Decision issued by Dr. Lee, partially granting plaintiff's  
4 health appeal. See ECF No. 1 at 13-4. However, review of the decision does not clarify the  
5 alleged roles of the named defendants, and plaintiff cannot pursue a claim premised on the failure  
6 of an official to favorably resolve his grievance. See e.g. Buckley v. Barlow, 997 F.2d 494, 495  
7 (8th Cir. 1993).

### 8 C. Analysis

9 Despite the earlier guidance provided by the court, the FAC reflects the same deficiencies  
10 as the original complaint. Amendment has not improved the complaint, and it remains unclear  
11 why plaintiff is attempting to make claims against these specific defendants. Moreover,  
12 plaintiff's transfer from HDSP to MCSP appears to have rendered moot his claims for injunctive  
13 relief. See e.g. Nelson v. Heiss, 271 F.3d 891, 897 (9th Cir. 2001) ("when a prisoner is moved  
14 from a prison, his action will usually become moot as to conditions at that particular facility").  
15 For these reasons, the undersigned finds that further amendment of the complaint would be futile  
16 and will therefore recommend dismissal of this action. "A district court may deny leave to amend  
17 when amendment would be futile." Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013).  
18 Dismissal of this action would not limit plaintiff's ability to challenge, in a new action, his  
19 medical treatment at MCSP, provided he clearly identifies the who, what, where and when of  
20 each claim.

### 21 III. Conclusion

22 For the foregoing reasons, the Clerk of Court is HEREBY DIRECTED to randomly assign  
23 a district judge to this action.

24 Further, IT IS HEREBY RECOMMENDED that:


25 1. For the reasons set forth in the undersigned's initial screening order, see ECF No. 8 at  
26 4, Federal Receiver J. Clark Kelso should be dismissed from this action.

27 2. This action should be dismissed without further leave to amend for failure to state a  
28 cognizable claim.

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These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one (21) days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: May 11, 2018

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE