



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

4 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”  
5 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
6 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
7 meritless legal theories or whose factual contentions are clearly baseless.” Jackson v. Arizona,  
8 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute  
9 on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490  
10 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,  
11 has an arguable legal and factual basis. Id.

12 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
13 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
14 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550  
15 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
16 However, in order to survive dismissal for failure to state a claim, a complaint must contain more  
17 than “a formulaic recitation of the elements of a cause of action;” it must contain factual  
18 allegations sufficient “to raise a right to relief above the speculative level.” Id. (citations  
19 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that  
20 merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original)  
21 (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d  
22 ed. 2004)).

23 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
24 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell  
25 Atl. Corp., 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
26 content that allows the court to draw the reasonable inference that the defendant is liable for the  
27 misconduct alleged.” Id. (citing Bell Atl. Corp., 550 U.S. at 556). In reviewing a complaint  
28 under this standard, the court must accept as true the allegations of the complaint in question,

1 Hospital Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), as well as construe the pleading  
2 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor, Jenkins v.  
3 McKeithen, 395 U.S. 411, 421 (1969).

4 II. Analysis

5 Plaintiff alleges that, on June 23, 2016, he filed a staff complaint which accused defendant  
6 Baker of sexually harassing him. ECF No. 7 at 4. After doing so, he claims that defendants  
7 Baker, Gonzalez, Rashid, Whitehead, and Marquez undertook a campaign of retaliation against  
8 him. Id. Plaintiff alleges that: (1) defendants Gonzalez, Marquez, and Rashid interfered with his  
9 medical treatment by telling plaintiff's psychiatric provider that he was "just playing games" and  
10 was not actually suicidal;<sup>1</sup> (2) defendant Whitehead verbally threatened plaintiff on several  
11 occasions; (3) defendants Baker and Gonzalez sexually harassed plaintiff by forcing him to  
12 remove his clothing in their presence; (4) defendants Baker and Gonzalez authored a false rules  
13 violation report against plaintiff; (5) Baker, Gonzalez, Rashid, Whitehead, and Marquez refused  
14 to allow plaintiff to go the canteen; and (6) defendant Whitehead declined to transport plaintiff to  
15 an authorized medical appointment. Id. at 4-9.

16 The court finds that the foregoing allegations are sufficient to state: (1) First Amendment  
17 retaliation claims against defendants Baker, Gonzalez, Rashid, Whitehead, and Marquez; (2) a  
18 claim under section 1983 that defendants Baker, Gonzalez, Rashid, Whitehead, and Marquez  
19 conspired to retaliate against plaintiff; (3) Eighth Amendment claims for interference with  
20 medical care against defendants Gonzalez, Marquez, Rashid, and Whitehead; and (4) Eighth  
21 Amendment sexual harassment claims against defendants Baker and Gonzalez.

22 Conclusion

23 Based on the foregoing, it is ORDERED that:

24 1. The allegations in the pleading are sufficient to state potentially cognizable (1)  
25 First Amendment retaliation claims against defendants Baker, Gonzalez, Rashid, Whitehead, and  
26 Marquez; (2) section 1983 conspiracy claims against defendants Baker, Gonzalez, Rashid,

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff alleges that, as a consequence of defendants' statements to his provider, he was sent  
back to his cell where he attempted suicide. ECF No. 7 at 5.

1 Whitehead, and Marquez to retaliate against plaintiff for protected conduct; (3) Eighth  
2 Amendment claims for interference with medical care against defendants Gonzalez, Marquez,  
3 Rashid, and Whitehead; and (4) Eighth Amendment sexual harassment claims against defendants  
4 Baker and Gonzalez;

5 2. Of the relevant defendants, only Rashid has not been served. Accordingly, with  
6 this order the Clerk of the Court shall provide to plaintiff a blank summons, a copy of the October  
7 4, 2017 first amended complaint, and one USM-285 form and instructions for service of process  
8 on defendant Rashid. Within 30 days of service of this order plaintiff should return the attached  
9 Notice of Submission of Documents with the completed summons, the completed USM-285  
10 form, and two copies of the endorsed complaint. The court will transmit them to the United  
11 States Marshal for service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure.  
12 Defendant Rashid will be required to respond to plaintiff's allegations within the deadlines stated  
13 in Rule 12(a)(1) of the Federal Rules of Civil Procedure.

14 3. Plaintiff is cautioned that failure to comply with this order may result in dismissal  
15 of this action for failure to prosecute.

16 4. The amended complaint does not state any claims against defendant Palko and,  
17 consequently, the Clerk of Court shall terminate him as a party to this action.

18 IT IS SO ORDERED.

19 DATED: October 16, 2017

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21 ALLISON CLAIRE  
22 UNITED STATES MAGISTRATE JUDGE  
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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH CANDLER,

Plaintiff,

v.

BAKER, et al.,

Defendants.

No. 2:17-cv-01885 AC P

NOTICE OF SUBMISSION OF  
DOCUMENTS

In accordance with the court's Screening Order, plaintiff hereby submits:

- 1 completed summons form
- 1 completed forms USM-285
- 2 copies of the October 4, 2017 complaint

Dated:

\_\_\_\_\_  
Plaintiff