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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GORDON DALE MEADOR,  
Plaintiff,  
v.  
P. MENDEZ, et al.,  
Defendants.

No. 2:19-cv-0587 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF Nos. 4, 5. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff’s trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month’s income credited to plaintiff’s prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
2 § 1915(b)(2).

3 II. Statutory Screening of Prisoner Complaints

4 The court is required to screen complaints brought by prisoners seeking relief against a  
5 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
6 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
7 "frivolous, malicious, or fail[] to state a claim upon which relief may be granted," or that "seek[]  
8 monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

9 A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact."  
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
11 Cir. 1984). "[A] judge may dismiss . . . claims which are 'based on indisputably meritless legal  
12 theories' or whose 'factual contentions are clearly baseless.'" Jackson v. Arizona, 885 F.2d 639,  
13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as  
14 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a  
15 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.  
16 Franklin, 745 F.2d at 1227-28 (citations omitted).

17 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the  
18 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of  
19 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550  
20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
21 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context  
22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,  
23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure  
24 to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a  
25 cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the  
26 speculative level." Twombly, 550 U.S. at 555 (citations omitted). "[T]he pleading must contain  
27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally  
28 cognizable right of action." Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting  
4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
5 content that allows the court to draw the reasonable inference that the defendant is liable for the  
6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this  
7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.  
8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the  
9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,  
10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

### 11 III. Complaint

12 The complaint states a single Eighth Amendment medical care claim against two named  
13 correctional officers, Mendez and Zayes, and an unnamed prison nurse. Plaintiff alleges that on  
14 August 2, 2018 at CSP-Sacramento, he experienced chest pain, shortness of breath, and a racing  
15 heartbeat. Plaintiff requested emergency medical attention from Officers Mendez and Zayes,  
16 who ignored him. After 3 ½ hours of pain, plaintiff spoke to the medication nurse, who had  
17 plaintiff brought out so she could check his blood pressure. The nurse confirmed an elevated  
18 heartrate, and ordered plaintiff brought immediately to the Triage and Treatment Area. There  
19 Nurse Doe gave plaintiff oxygen, performed an EKG, and called the doctor who ordered I.V.  
20 medication to control plaintiff’s heartrate. Plaintiff spent another 3 hours under observation. He  
21 was in pain for a total of 7 hours. Nurse Doe did not obtain pain medication or breathing  
22 treatments for plaintiff, who has COPD.

### 23 IV. Governing Eighth Amendment Principles

24 In order to state a § 1983 claim for violation of the Eighth Amendment based on  
25 inadequate medical care, a plaintiff must allege “acts or omissions sufficiently harmful to  
26 evidence deliberate indifference to serious medical needs.” Estelle v. Gamble, 429 U.S. 97, 106  
27 (1976). To prevail, plaintiff must show both that his medical needs were objectively serious, and  
28 that defendants possessed a sufficiently culpable state of mind. Wilson v. Seiter, 501 U.S. 294,

1 299 (1991); McKinney v. Anderson, 959 F.2d 853 (9th Cir. 1992) (on remand). A serious  
2 medical need exists if the failure to treat a prisoner’s condition could result in further significant  
3 injury or the unnecessary and wanton infliction of pain. See, Wood v. Housewright, 900 F. 2d  
4 1332, 1337-41 (9th Cir. 1990). The requisite state of mind is “deliberate indifference.” Hudson  
5 v. McMillian, 503 U.S. 1, 4 (1992).

6 In Farmer v. Brennan, 511 U.S. 825, 114 S. Ct. 1970 (1994) the Supreme Court  
7 established a very strict standard which a plaintiff must meet in order to establish “deliberate  
8 indifference.” Negligence is insufficient. Farmer, 511 U.S. at 835. Even civil recklessness  
9 (failure to act in the face of an unjustifiably high risk of harm which is so obvious that it should  
10 be known) is insufficient. Id. at 836-37. Neither is it sufficient that a reasonable person would  
11 have known of the risk or that a defendant should have known of the risk. Id. at 842. A prison  
12 official acts with deliberate indifference only if he subjectively knows of and disregards an  
13 excessive risk to inmate health and safety. Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir.  
14 2004).

15 V. Failure to State a Claim

16 The allegations of the complaint do not state a claim against any defendant. Even  
17 assuming that Officers Mendez and Zayas subjectively realized that plaintiff was having a serious  
18 cardiac episode and disregarded that fact, plaintiff was ultimately seen and treated for his elevated  
19 heart rate on the same night that he first experienced symptoms. The fact that plaintiff spent three  
20 hours under observation after receiving medication, but was not kept longer than that, indicates  
21 that the treatment was successful in restoring a normal heartrate. No factual basis appears for  
22 plaintiff’s conclusory assertion that the failure to obtain immediate medical care caused him  
23 permanent heart damage. When an Eighth Amendment claim is based on a delay in providing  
24 medical care, the delay itself must be the cause of identifiable injury; delay alone is insufficient.  
25 Shapley v. Nevada Bd. of State Prison Com’rs, 766 F.2d 404, 408 (9th Cir. 1985).

26 Plaintiff’s distress about this episode is understandable, but his own opinion that he  
27 needed additional medications does not support a deliberate indifference claim against Nurse  
28 Doe. See Jackson v. McIntosh, 90 F.3d 330 (9th Cir. 1996). It is clear that Nurse Doe did

1 provide care promptly upon plaintiff's arrival at the TTA, that Nurse Doe contacted a doctor, and  
2 that plaintiff accordingly received medication that stabilized his heartrate. These facts are  
3 inconsistent with deliberate indifference on the part of Nurse Doe.

4 For these reasons, the complaint fails to state a claim against any defendant. The  
5 complaint is not suitable for service, but plaintiff will be given the opportunity to amend.

6 VI. Leave to Amend

7 If plaintiff chooses to file a first amended complaint, he must demonstrate how the  
8 conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo  
9 v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how  
10 each named defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th  
11 Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link  
12 or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy,  
13 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official  
14 participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266,  
15 268 (9th Cir. 1982) (citations omitted).

16 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make  
17 his first amended complaint complete. Local Rule 220 requires that an amended complaint be  
18 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
19 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
20 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th  
21 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled  
22 in subsequent amended complaint to preserve appeal). Once plaintiff files a first amended  
23 complaint, the original complaint no longer serves any function in the case. Therefore, in an  
24 amended complaint, as in an original complaint, each claim and the involvement of each  
25 defendant must be sufficiently alleged.

26 VII. Plain Language Summary of this Order for a Pro Se Litigant

27 Your request to proceed in forma pauperis is granted and you are not required to pay the  
28 entire filing fee immediately.



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5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form used in this district.

DATED: June 2, 2021

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE