



1 now deny as premature the outstanding motion to dismiss. There is little benefit to leave it  
2 pending when the court is already addressing its concerns through screening.

### 3 **Screening Order**

#### 4 **I. Screening and Pleading Requirements**

5 A federal court must screen a prisoner’s complaint that seeks relief against a governmental  
6 entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable  
7 claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a  
8 claim upon which relief may be granted, or seeks monetary relief from a defendant who is  
9 immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

10 A complaint must contain a short and plain statement that plaintiff is entitled to relief,  
11 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its  
12 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not  
13 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.  
14 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere  
15 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not  
16 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,  
17 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that  
18 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264  
19 n.2 (9th Cir. 2006) (en banc) (citations omitted).

20 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404  
21 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it  
22 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
23 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).  
24 However, “a liberal interpretation of a civil rights complaint may not supply essential elements  
25 of the claim that were not initially pled.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,  
26 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**II. Analysis**

Plaintiff’s sixty-two-page complaint names twenty defendants, ECF No. 22 at 5, and recounts incidents of retaliation and excessive force ranging in date from September 2021, *id.* at 7, to May 5, 2022, *id.* at 11. Many of these claims bear no obvious relation to each other. For instance, plaintiff alleges that, on January 14, 2022, defendant Aguilar retaliated against him by searching his cell and destroying his property. *Id.* at 9. Separately, plaintiff alleges that, on May 5, 2022, defendant Joseph denied him medical attention. *Id.* at 10. Where, as here, plaintiff has sued numerous defendants, all claims must arise out of the same transaction or occurrence and have common questions of law or fact. Fed. R. Civ. P. 20(a)(2). And, practically speaking, litigating a case with as many defendants and varied claims as are contained in the first amended complaint will prove difficult.

I will give plaintiff leave to amend. He is advised that the amended complaint will supersede the current one.<sup>1</sup> *See Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc). The amended complaint should be titled “Second Amended Complaint” and refer to the appropriate case number. If he persists in joining unrelated claims or declines to file an amended complaint within the deadline, I will recommend dismissing claims so that only related ones remain.

Accordingly, it is ORDERED that:

1. Within thirty days from the service of this order, plaintiff may file an amended complaint. If he does not, I will recommend that claims be dismissed so that only related ones remain.
2. The Clerk of Court shall send plaintiff a section 1983 complaint form with this order and shall randomly assign a District Judge to this matter.

Further, it is RECOMMENDED that defendant Diaz’s motion to dismiss, ECF No. 18, be

---

<sup>1</sup> Plaintiff is advised that he can no longer amend as a matter of course and may do so now only by leave of the court or with defendants’ written consent. Fed. R. Civ. P. 15(a)(2). This order constitutes leave of the court.

1 DENIED as premature.

2           These findings and recommendations are submitted to the United States District Judge  
3 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
4 after being served with these findings and recommendations, any party may file written  
5 objections with the court and serve a copy on all parties. Such a document should be captioned  
6 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
7 objections shall be served and filed within fourteen days after service of the objections. The  
8 parties are advised that failure to file objections within the specified time may waive the right to  
9 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
10 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

11  
12 IT IS SO ORDERED.

13 Dated: November 13, 2023

  
\_\_\_\_\_  
JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28