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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARIUS DE'MON LAKE,  
  
  Plaintiff,  
  
  v.  
  
A. OBOYLE, et al.  
  
  Defendants.

No. 2:23-cv-1306 AC P  
  
ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. Currently before the court is plaintiff’s second amended complaint. ECF No. 13.

I. Statutory Screening of Prisoner Complaints

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

A claim “is [legally] frivolous where it lacks an arguable basis either 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). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,

1 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as  
2 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a  
3 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.  
4 Franklin, 745 F.2d at 1227-28 (citations omitted).

5 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
6 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
7 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550  
8 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
9 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context  
10 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,  
11 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure  
12 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a  
13 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the  
14 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain  
15 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally  
16 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur  
17 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

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

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1           II.       Second Amended Complaint

2           The second amended complaint alleges that on July 7, 2023, plaintiff was falsely written  
3 up for assaulting a peace officer after an officer assaulted him. ECF No. 13 at 3. After the  
4 assault, responding medical staff directed defendants OBoyle and Rutledge to take plaintiff to the  
5 treatment and triage area for further treatment. Id. OBoyle and Rutledge refused to take plaintiff  
6 for treatment in retaliation for plaintiff assaulting another officer. Id.

7           Plaintiff has sufficiently stated a claim for deliberate indifference to medical needs against  
8 defendants OBoyle and Rutledge. See Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir.  
9 1988) (deliberate indifference “may appear when prison officials deny, delay or intentionally  
10 interfere with medical treatment” (citation omitted)). However, he fails to state a claim for  
11 retaliation. In order to state a claim for retaliation, plaintiff must allege facts showing that the  
12 defendants took adverse action against him and that they were motivated to do so by plaintiff’s  
13 protected conduct. Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir. 2005) (citation omitted).  
14 Plaintiff alleges that defendants refused to take him to medical based on their belief that he had  
15 assaulted another officer but assaulting an officer is not protected conduct under the First  
16 Amendment.

17           III.     No Leave to Amend

18           Leave to amend should be granted if it appears possible that the defects in the complaint  
19 could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31  
20 (9th Cir. 2000) (en banc). However, if, after careful consideration, it is clear that a complaint  
21 cannot be cured by amendment, the court may dismiss without leave to amend. Cato v. United  
22 States, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

23           The undersigned finds that, as set forth above, the second amended complaint fails to state  
24 a claim for retaliation. Plaintiff has already been given an opportunity to amend the complaint  
25 and advised what kind of information he needed to provide. Given the additional facts provided  
26 by plaintiff, it does not appear that further amendment would result in a cognizable retaliation  
27 claim. As a result, leave to amend would be futile and the retaliation claim should be dismissed  
28 without leave to amend.

1 IV. Plain Language Summary of this Order for a Pro Se Litigant

2 The complaint states a claim for deliberate indifference against defendants OBoyle and  
3 Rutledge and they will be required to respond to the complaint. Service will be directed by  
4 separate order. You have not stated a claim for retaliation against these defendants because you  
5 claim that they refused to take you for medical treatment because they believed you had assaulted  
6 another officer and assaulting an officer is not protected conduct. It is being recommended that  
7 your retaliation claim be dismissed because it does not look like there are additional facts that you  
8 can add that would fix the problems with the claim.

9 In accordance with the above, IT IS HEREBY ORDERED that:

10 1. In accordance with 28 U.S.C. § 1915A, the court has screened and found service of the  
11 complaint appropriate on plaintiff's deliberate indifference claim. Service will be directed by  
12 separate order.

13 2. The Clerk of the Court shall randomly assign a United States District Judge to this  
14 action.

15 IT IS FURTHER RECOMMENDED that plaintiff's retaliation claim be dismissed  
16 without leave to amend for failure to state a claim.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
19 after being served with these findings and recommendations, plaintiff may file written objections  
20 with the court. Such a document should be captioned "Objections to Magistrate Judges Findings  
21 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
22 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
23 (9th Cir. 1991).

24 DATED: November 27, 2023

25   
26 ALLISON CLAIRE  
27 UNITED STATES MAGISTRATE JUDGE  
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