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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN ROBERT GALLEGOS,  
Plaintiff,  
v.  
R. FERNANDEZ, *et al.*,  
Defendants.

Case No. 2:24-cv-01786-DAD-JDP (PC)

**ORDER:**

- (1) FINDING THAT THE COMPLAINT STATES EIGHTH AMENDMENT DELIBERATE INDIFFERENCE CLAIMS AGAINST THREE “DOE” MEDICAL DEFENDANTS AND AN EIGHTH AMENDMENT EXCESSIVE FORCE CLAIM AGAINST DEFENDANT FERNANDEZ
- (2) DIRECTING PLAINTIFF TO INDICATE WHETHER HE WISHES TO PROCEED WITH CLAIMS DEEMED COGNIZABLE IN THIS ORDER OR DELAY SERVICE AND FILE ANOTHER AMENDED COMPLAINT
- (3) GRANTING PLAINTIFF’S APPLICATION TO PROCEED *IN FORMA PAUPERIS*

ECF Nos. 1 & 2

Plaintiff, a state prisoner, alleges that three “Doe” defendants violated his Eighth Amendment rights by failing to provide him with adequate medical care, and that defendant Fernandez violated his Eighth Amendment rights by using excessive force against him. These

1 claims are suitable to proceed. He also claims that defendants Jalaine Davis and G. Brown  
2 violated his rights by mishandling his prison grievances related to the alleged violations of his  
3 Eighth Amendment rights. These allegations are, for the reasons stated below, non-cognizable.  
4 Plaintiff must decide whether to proceed with the claims deemed cognizable or to delay serving  
5 any defendant and to file an amended complaint. I will grant plaintiff's application to proceed *in*  
6 *forma pauperis*. ECF No. 2.

### 7 **Screening and Pleading Requirements**

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

13 A complaint must contain a short and plain statement that plaintiff is entitled to relief,  
14 Fed. R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its  
15 face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not  
16 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.  
17 662, 678 (2009). If the allegations "do not permit the court to infer more than the mere  
18 possibility of misconduct," the complaint states no claim. *Id.* at 679. The complaint need not  
19 identify "a precise legal theory." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024,  
20 1038 (9th Cir. 2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that  
21 give rise to an enforceable right to relief." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264  
22 n.2 (9th Cir. 2006) (en banc) (citations omitted).

23 The court must construe a pro se litigant's complaint liberally. *See Haines v. Kerner*, 404  
24 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it  
25 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
26 would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).  
27 However, "a liberal interpretation of a civil rights complaint may not supply essential elements  
28

1 of the claim that were not initially pled.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,  
2 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

### 3 **Analysis**

4 Plaintiff alleges that on an unspecified date he purposefully swallowed a handful of  
5 broken glass. ECF No. 1 at 3. After presenting to medical for assistance, three separate “Doe”  
6 medical providers were deliberately indifferent to his needs and failed to offer serious treatment  
7 for his condition. *Id.* at 3-5. These allegations are sufficient to state Eighth Amendment medical  
8 claims against these defendants, but these defendants cannot be served until they are identified.

9 In a distinct though arguably related claim, plaintiff alleges that while he was demanding  
10 to be seen by medical providers and suffering a mental health crisis, defendant Fernandez used  
11 excessive force against him. *Id.* at 6-8. These allegations state a viable Eighth Amendment  
12 excessive force claim.

13 By contrast, plaintiff’s allegations that defendants Davis and Brown incorrectly  
14 mishandled and rejected his prison grievances, *id.* at 8-10, are non-cognizable. There is no  
15 federal right to any particular prison grievance procedure. *Ramirez v. Galaza*, 334 F.3d 850, 860  
16 (9th Cir. 2003).

17 Plaintiff shall, within thirty days of this order’s entry, indicate in writing that he intends to  
18 proceed only with the medical and excessive force claims identified as viable above, or he must  
19 submit an amended complaint. He is advised that if he selects the latter option, the new amended  
20 complaint must be complete in itself and that it will entirely supersede his current complaint. *See*  
21 *Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc). It should be titled  
22 “Amended Complaint.”

23 Accordingly, it is ORDERED that:

24 1. Within thirty days of this order’s entry, plaintiff shall either inform the court in writing  
25 of his intention to proceed with the claims deemed cognizable in the current complaint, or he shall  
26 file an amended complaint.


27 2. The Clerk of Court is directed to send plaintiff a section 1983 complaint form with this  
28 order.

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3. Plaintiff's application to proceed *in forma pauperis*, ECF No. 2, is GRANTED.

IT IS SO ORDERED.

Dated: August 29, 2024

  
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JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE