

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID F. HERRINGTON,  
Plaintiff,  
v.  
NAPA STATE HOSPITAL,  
Defendant.

Case No. [17-cv-02637-JSC](#)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND**

**INTRODUCTION**

Plaintiff, an inmate at Napa State Hospital, filed this pro se civil rights complaint under 42 U.S.C. § 1983 against “staff” members.<sup>1</sup> Plaintiff’s application to proceed *in forma pauperis* is granted in a separate order. For the reasons explained below, the complaint is dismissed with leave to amend.

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.*

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<sup>1</sup> Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 3.)

1 § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901  
2 F.2d 696, 699 (9th Cir. 1990).

3 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the  
4 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the  
5 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon  
6 which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although to state  
7 a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to  
8 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a  
9 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must  
10 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,  
11 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a  
12 claim for relief that is plausible on its face.” *Id.* at 570.

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a  
14 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
15 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.  
16 42, 48 (1988).

### 17 LEGAL CLAIMS

18 Plaintiff alleges that he was “killed by 5 staff,” and that his heart was later “restarted” at a  
19 medical center. (ECF No. 1 at 3.) Plaintiff lists the names of these staff members, but he does not  
20 allege any other facts. In order to state a cognizable claim for relief against NSH staff members  
21 for assaulting him, Plaintiff must allege more facts, including the circumstances surrounding the  
22 assault, the conduct of each of the different staff members who participated in the assault, his own  
23 conduct before, during and after the assault, and approximately when and where the assault took  
24 place. Plaintiff will be given the opportunity to file an amended complaint in which he makes  
25 these allegations.

26 In the complaint and a subsequent letter, Plaintiff requests to change the venue of his  
27 criminal proceedings from Humboldt County Superior Court to this Court. Plaintiff must make  
28 his request for a change of venue in Humboldt County Superior Court, not in federal court.

1 **CONCLUSION**

2 1. The complaint is dismissed with leave to amend. Plaintiff shall file an amended  
3 complaint within **twenty eight (28) days from the date this order is filed**. The amended  
4 complaint **must** include the caption and civil case number used in this order (No. C 16-2876 JSC  
5 (PR)) and the words “COURT-ORDERED FIRST AMENDED COMPLAINT” on the first page.  
6 Because an amended complaint completely replaces the original complaint, *see Ferdik v. Bonzelet*,  
7 963 F.2d 1258, 1262 (9th Cir. 1992), Plaintiff may not incorporate material from the original by  
8 reference; he must include in his amended complaint all the claims he wishes to pursue. Failure to  
9 amend within the designated time and in accordance with this order will result in the dismissal of  
10 this action.

11 2. It is Plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court  
12 informed of any change of address by filing a separate paper with the clerk headed “Notice of  
13 Change of Address.” He also must comply with the Court’s orders in a timely fashion, although he  
14 may request an extension of time provided it is accompanied by a showing of good cause and it is  
15 filed on or before the deadline he wants to extend. Failure to do so may result in the dismissal of  
16 this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

17 **IT IS SO ORDERED.**

18 Dated: May 23, 2017

19   
20 JACQUELINE SCOTT CORLEY  
United States Magistrate Judge

United States District Court  
Northern District of California