

United States District Court  
Northern District of California

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID ANTHONY LOVELL,  
Plaintiff,  
v.  
COOPER, et al.,  
Defendants.

Case No. [23-cv-01451-WHO](#) (PR)

**ORDER OF SERVICE;**  
**ORDER DIRECTING**  
**DEFENDANTS TO FILE A**  
**DISPOSITIVE MOTION OR**  
**NOTICE REGARDING SUCH**  
**MOTION;**  
**INSTRUCTIONS TO CLERK**

Plaintiff David Anthony Lovell III alleges defendants violated his Eighth Amendment rights by being deliberate indifferent to his serious medical needs. His first amended complaint containing these allegations is now before me for review pursuant to 28 U.S.C. § 1915A(a).

Lovell has stated cognizable Eighth Amendment deliberate indifference to serious medical needs claims against East Oakland Police Officers Lara, Tellez, Iniguez, Arzate, and Dr. Cooper at the Santa Rita Jail. The Court directs these defendants to file in response to the complaint a dispositive motion, or a notice regarding such motion, on or before **September 3, 2024**.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any

1 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim  
2 upon which relief may be granted or seek monetary relief from a defendant who is immune  
3 from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.  
4 *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

5 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a  
6 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
7 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial  
8 plausibility when the plaintiff pleads factual content that allows the court to draw the  
9 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting  
10 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal  
11 conclusions cast in the form of factual allegations if those conclusions cannot reasonably  
12 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55  
13 (9th Cir. 1994).

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

18 **B. Legal Claims**

19 Lovell alleges that on May 13, 2022 he was deprived of medical care after being  
20 stabbed in the head. (Am. Compl., Dkt. No. 15 at 2.) He alleges that (i) East Oakland  
21 Police Department Officers Lara and Tellez urged medical staff at Highland Hospital to  
22 “not help” him and interfered with his receiving proper medical care; (ii) Officers Iniguez  
23 and Arzate kept him handcuffed even though his arms were going numb; and (iii) Dr.  
24 Cooper at the Santa Rita Jail failed to provide adequate medical care. (*Id.* at 2-3.)

25 When liberally construed, Lovell has stated Eighth Amendment claims of deliberate  
26 indifference to his serious medical needs against Lara, Tellez, Iniguez, Arzate, and Cooper.

27 **CONCLUSION**

28 For the foregoing reasons, the Court orders as follows:

1           1.       The Clerk of the Court shall issue summons and the United States  
2 Marshal shall serve, without prepayment of fees, a copy of the operative complaint in this  
3 matter (Dkt. No. 15), all attachments thereto, on defendants East Oakland Police Officers  
4 E. Lara, D. Tellez, Iniguez, and Arzate; and on Dr. Cooper at the Santa Rita Jail, and  
5 orders these defendants to respond to the cognizable claims raised in the operative  
6 complaint.

7           2.       On or before **September 2, 2024**, defendants shall file a motion for summary  
8 judgment or other dispositive motion with respect to the claim(s) in the complaint found to  
9 be cognizable above.

10           a.       If defendants elect to file a motion to dismiss on the grounds plaintiff  
11 failed to exhaust his available administrative remedies as required by 42 U.S.C.  
12 § 1997e(a), defendants shall do so in a motion for summary judgment, as required by  
13 *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).

14           b.       Any motion for summary judgment shall be supported by adequate  
15 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of  
16 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor  
17 qualified immunity found, if material facts are in dispute. If any defendant is of the  
18 opinion that this case cannot be resolved by summary judgment, he shall so inform the  
19 Court prior to the date the summary judgment motion is due.

20           3.       Plaintiff's opposition to the dispositive motion shall be filed with the Court  
21 and served on defendants no later than forty-five (45) days from the date defendants'  
22 motion is filed.

23           4.       Defendants shall file a reply brief no later than fifteen (15) days after  
24 plaintiff's opposition is filed.

25           5.       The motion shall be deemed submitted as of the date the reply brief is due.  
26 No hearing will be held on the motion unless the Court so orders at a later date.

27           6.       All communications by the plaintiff with the Court must be served on  
28 defendants, or on defendants' counsel once counsel has been designated, by mailing a true

1 copy of the document to defendants or defendants’ counsel.

2 7. Discovery may be taken in accordance with the Federal Rules of Civil  
3 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local  
4 Rule 16-1 is required before the parties may conduct discovery.

5 Plaintiff may use any applicable jail procedures to request copies of (or the  
6 opportunity to review) any reports, medical records, or other records maintained by jail  
7 officials that are relevant to the claims found cognizable in this Order. Such requests must  
8 be made directly to jail officials, not to the Court.

9 8. It is plaintiff’s responsibility to prosecute this case. Plaintiff must keep the  
10 Court informed of any change of address and must comply with the Court’s orders in a  
11 timely fashion. Failure to do so may result in the dismissal of this action for failure to  
12 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

13 9. Extensions of time must be filed no later than the deadline sought to be  
14 extended and must be accompanied by a showing of good cause.

15 10. A decision from the Ninth Circuit requires that pro se prisoner-plaintiffs be  
16 given “notice of what is required of them in order to oppose” summary judgment motions  
17 at the time of filing of the motions, rather than when the court orders service of process or  
18 otherwise before the motions are filed. *Woods v. Carey*, 684 F.3d 934, 939-41 (9th Cir.  
19 2012). Defendants shall provide the following notice to plaintiff when he files and serves  
20 any motion for summary judgment:

21 The defendants have made a motion for summary judgment by which they  
22 seek to have your case dismissed. A motion for summary judgment under  
23 Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your  
24 case.

25 Rule 56 tells you what you must do in order to oppose a motion for summary  
26 judgment. Generally, summary judgment must be granted when there is no  
27 genuine issue of material fact — that is, if there is no real dispute about any  
28 fact that would affect the result of your case, the party who asked for  
summary judgment is entitled to judgment as a matter of law, which will end  
your case. When a party you are suing makes a motion for summary  
judgment that is properly supported by declarations (or other sworn


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

testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendants' declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

*Rand v. Rowland*, 154 F.3d 952, 962-963 (9th Cir. 1998).

**IT IS SO ORDERED.**

**Dated:** May 9, 2024

  
WILLIAM H. ORRICK  
United States District Judge