

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

David D. Harris v. Nurse Richmond; Dr. Blaisdell

Harris · No. 25-cv-1574-BAS-DDL · Decided November 21, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 DAVID D. HARRIS, Case No.: 25-cv-1574-BAS-DDL 12 Plaintiff,
ORDER: 13 vs. (1) VACATING JUDGMENT AND 14 NURSE RICHMOND; DR.
BLAISDELL, REOPENING CASE; 15 Defendants.

(2) GRANTING MOTION TO 16 PROCEED IN FORMA 17 PAUPERIS; AND 18 (3)
DISMISSING COMPLAINT 19 PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b) 20 21 22
23 On June 13, 2025, pro se Plaintiff David D. Harris, a state inmate incarcerated at the 24
Richard J. Donovan Correctional Facility (“RJD”) in San Diego, California filed a civil 25 rights
complaint pursuant to 42 U.S.C. § 1983, along with a motion to proceed in forma 26 pauperis
(“IFP”).

(ECF Nos. 1, 2.) On July 11, 2025, the Court denied the IFP motion 27 because it was not
accompanied by a certified trust account statement. (ECF No. 3.) The 28 Court nevertheless
granted Plaintiff additional time to pay the filing fee or submit a 1 certified trust account statement
on or before August 25, 2025. (Id.)

On September 24, 2 2025, having not heard from Plaintiff, the Court dismissed the case without
prejudice for 3 failure to satisfy the filing fee requirement. (ECF Nos. 4, 5.) 4 On October 2, 2025,
Plaintiff submitted a certified copy of his inmate trust account 5 which the Court accepted. (ECF
No. 6.)

The Court thus VACATES the September 24, 6 2025, judgment and ORDERS the Clerk of Court
to reopen the case. 7 In this Order, the Court first addresses Plaintiff’s motion to proceed IFP.
Second, the 8 Court screens the complaint given leave to proceed IFP. 9 I. Motion to Proceed IFP
10 All parties instituting any civil action, suit or proceeding in a district court of the 11 United
States, except an application for writ of habeas corpus, must pay a filing fee of 12 \$405.00,
consisting of a \$350.00 statutory fee plus a \$55.00 administrative fee, although 13 the
administrative fee does not apply to persons granted leave to proceed IFP.

See 28 U.S.C. 14 § 1914(a). 15 The action may proceed despite a plaintiff’s failure to prepay the
entire fee only if 16 he is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). See
Andrews v. 17 Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007). A prisoner seeking leave to

proceed IFP 18 must submit a “certified copy of the trust fund account statement (or institutional 19 equivalent) for... the 6-month period immediately preceding the filing of the complaint.” 20 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir.

2005). From the 21 certified trust account statement, the Court assesses an initial payment of 20% of (a) the 22 average monthly deposits in the account for the past six months, or (b) the average monthly 23 balance in the account for the past six months, whichever is greater, unless the prisoner has 24 insufficient assets. See 28 U.S.C. § 1915(b)(1)&(4); *Bruce v. Samuels*, 577 U.S. 82, 84 25 (2016).

Prisoners who proceed IFP must pay any remaining balance in “increments” or 26 “installments,” regardless of whether their action is ultimately dismissed. 28 U.S.C. § 27 1915(b)(1)&(2); *Bruce*, 577 U.S. at 84. 28 Here, in support of his IFP motion, Plaintiff has submitted a copy of his California 1 Department of Corrections and Rehabilitation (“CDCR”) Inmate Statement Report and 2 Prison Certificate attested to by a CDCR trust account official.

(ECF No. 6.) The document 3 shows he had an average monthly balance of \$11.52 and average monthly deposits of 4 \$13.36, with an available balance of \$4.42. (Id.) Thus, the Court GRANTS Plaintiff’s 5 motion to proceed IFP and assesses an initial partial filing fee of \$2.67.

However, this 6 initial fee need be collected only if sufficient funds are available in Plaintiff’s account at 7 the time this Order is executed. See 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event 8 shall a prisoner be prohibited from bringing a civil action or appealing a civil action or 9 criminal judgment for the reason that the prisoner has no assets and no means by which to 10 pay the initial partial filing fee”); *Taylor v. Delatoore*, 281 F.3d 844, 850 (9th Cir.

2002) 11 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a 12 prisoner’s IFP case based solely on “failure to pay... due to the lack of funds available to 13 him when payment is ordered”). 14 II. Screening Pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b) 15 A. Standard of Review 16 Because Plaintiff is a prisoner proceeding IFP, his Complaint requires a pre-answer 17 screening pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b).

The Court must sua sponte 18 dismiss a prisoner’s IFP complaint, or any portion of it, which is frivolous, malicious, fails 19 to state a claim, or seeks damages from defendants who are immune. See *Lopez v. Smith*, 20 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc); *Rhodes v. Robinson*, 621 F.3d 1002, 21 1004 (9th Cir. 2010). 22 “The standard for determining whether a plaintiff has failed to state a claim upon 23 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of 24 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watson v. Carter*, 668 F.3d 25 1108, 1112 (9th Cir.

2012); see also *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 26 2012) (noting that § 1915A screening “incorporates the familiar standard applied in the 27 context of failure to state a claim

under Federal Rule of Civil Procedure 12(b)(6)”). Rule 28 12(b)(6) requires a complaint to “contain sufficient factual matter, accepted as true, to ‘state 1 a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), 2 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

3 Title 42 U.S.C. § 1983 “creates a private right of action against individuals who, 4 acting under color of state law, violate federal constitutional or statutory rights.” *Devereaux 5 v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of 6 substantive rights, but merely provides a method for vindicating federal rights elsewhere 7 conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (citation modified). “To 8 establish § 1983 liability, a plaintiff must show both (1) deprivation of a right secured by 9 the Constitution and laws of the United States, and (2) that the deprivation was committed 10 by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 11 1138 (9th Cir.

2012). 12 B. Allegations in the Complaint 13 Plaintiff alleges that on May 10, 2025, he was suffering from auditory hallucinations 14 which caused him to be suicidal and to cut his wrist and forearm. (ECF No. 1-2.) Defendant 15 Nurse Richmond responded 25 minutes later although her desk was located five feet from 16 Plaintiff’s cell. (Id.) Plaintiff alleges Nurse Richmond put a clear bandage on his arm but 17 could have wrapped it tightly and given him pain medication but did not, and that 18 Defendant Dr. Blaisdell could have sutured his cut at the prison but decided to transfer him 19 to an outside hospital 30-40 minutes away.

(Id.) Plaintiff lost a quarter pint of blood 20 requiring a transfusion and a five-day hospital stay; he suffered extreme pain. (Id.) He 21 claims that Nurse Richmond and Dr. Blaisdell were negligent and deliberately indifferent 22 to his medical needs, and that they should have taken the incident more seriously because 23 he still had a bandage on a 21-inch laceration from his “last episode.” (Id.)

24 Plaintiff alleges that before Dr. Blaisdell sent him to the hospital he asked Nurse 25 Richmond, “[W]as that the same Harris from A-yard?” to which Nurse Richmond 26 responded “Yes, do you know him?,” and Dr. Blaisdell replied yes, Plaintiff was one of his 27 patients. (Id. at 2.) That exchange was of little importance to Plaintiff at the time, but he 28 now suspects Dr. Blaisdell “may have delayed [medical care out] of malice,” because 1 Plaintiff has “filed several complaints against him for malpractice for taking [Plaintiff’s] 2 pain medication away without discussing an alternative solution to [his] wellbeing.” (Id.)

3 C. Analysis 4 The Eighth Amendment’s prohibition on the infliction of cruel and unusual 5 punishment creates an “obligation to provide medical care for those whom it is punishing 6 by incarceration.” *Estelle v. Gamble*, 429 U.S. 97, 101–03 (1976). “[A] prison official 7 violates the Eighth Amendment when two requirements are met.

First, the deprivation 8 alleged must be, objectively, ‘sufficiently serious.’” *Farmer v. Brennan*, 511 U.S. 825, 834 9 (1994). Second, a plaintiff must allege that the prison official had a “‘sufficiently culpable 10 state of mind’... [T]hat state of mind is one of ‘deliberate indifference’ to inmate health 11 or safety.” *Id.* Thus, a prison official can be held liable only if he “‘knows of and disregards 12 an excessive risk to inmate health and safety;” he “‘must both be aware of facts from which 13 the inference could be drawn that a substantial risk of serious harm exists, and he must also 14 draw the inference.” *Id.* at 837.1 “[I]ndicia of a ‘serious’ medical need include (1) the 15 existence of an injury that a reasonable doctor would find important and worthy of 16 comment or treatment, (2) the presence of a medical condition that significantly affects an 17 individual’s daily activities, and (3) the existence of chronic or substantial pain.” *Doty v. 18 County of Lassen*, 37 F.3d 540, 546 n.3 (9th Cir.

1994). 19 Here, the complaint alleges negligence or at most a disagreement between Plaintiff 20 and his nurse over whether his cut should have been bandaged differently, and with his 21 treating physician over whether his cut should have been sutured at the prison rather than 22 23 24 1 “Deliberate indifference ‘may appear when prison officials deny, delay or intentionally interfere with 25 medical treatment.’” *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir.

2014) (quoting *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988)). Deliberate indifference can also be shown where the 26 chosen course of medical treatment was “medically unacceptable under the circumstances” and chosen “in conscious disregard of an excessive risk to the prisoner’s health.” *Toguchi v. Chung*, 391 F.3d 1051, 27 1058 (9th Cir. 2004).

However, allegations of inadequate medical treatment, medical malpractice, or even gross negligence by themselves do not rise to the level of an Eighth Amendment violation. See 28 1 the hospital. See *Colwell*, 763 F.3d at 1068 (“A difference of opinion between a physician 2 and the prisoner—or between medical professionals—concerning what medical care is 3 appropriate does not amount to deliberate indifference.”); *Toguchi*, 391 F.3d at 1058 (a 4 disagreement over the necessity or extent of medical treatment does not show deliberate 5 indifference); *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir.

1989) (“A difference of opinion 6 does not amount to a deliberate indifference to [plaintiff]’s serious medical needs.”); 7 *Mayfield v. Craven*, 433 F.2d 873, 874 (9th Cir. 1970) (“[A] difference of opinion between 8 a prisoner patient and prison medical authorities as to what treatment is proper and 9 necessary does not give rise to a claim under [§ 1983].”) 10 Plaintiff alleges that Dr. Blaisdell sent him to the outside hospital rather than suture 11 the cut himself at the prison, not out of medical discretion but due to past complaints of 12 malpractice.

However, there are no factual allegations which would plausibly support such 13 a claim. Plaintiff relies on speculation, merely stating that Dr. Blaisdell acknowledged that 14 he recognized Plaintiff as a prior patient. See *Iqbal*, 556 U.S. at 678 (stating that the “mere 15 possibility of

misconduct” falls short of the plausibility standard); *Wood v. Yordy*, 753 F.3d 16 899, 905 (9th Cir.

2014) (noting that “mere speculation that defendants acted out of 17 retaliation is not sufficient” to state a claim). If Plaintiff wishes to proceed with an Eighth 18 Amendment deliberate indifference claim against either Nurse Richmond or Dr. Blaisdell, 19 he must set forth factual allegations which plausibly suggest they knew of and disregarded 20 an excessive risk to his health and safety, by showing they were “aware of facts from which 21 the inference could be drawn,” that he faced “a substantial risk of serious harm” by 22 bandaging his cut and sending him to the hospital rather than providing different or faster 23 care at the prison, and actually drew that inference.

Farmer, 511 U.S. at 837; see also 24 *Estelle*, 429 U.S. at 105–07 (“[A]n inadvertent failure to provide medical care, mere 25 negligence or medical malpractice and differences of opinion over what medical treatment 26 is proper, do not state an Eighth Amendment claim.”); *Iqbal*, 556 U.S. at 678 (noting that 27 a complaint is subject to dismissal for failure to state a claim if it does not “contain 28 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its 1 face,” and the “mere possibility of misconduct” falls short of meeting this plausibility 2 standard).

3 Thus, the Complaint is dismissed pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b) 4 for failure to state a claim. 5 D. Leave to Amend 6 In light of his pro se status, the Court grants Plaintiff leave to amend his Complaint 7 to address the pleading deficiencies identified in this Order. See *Rosati v. Igbinoso*, 791 8 F.3d 1037, 1039 (9th Cir. 2015) (citation modified) (“A district court should not dismiss a 9 pro se complaint without leave to amend [pursuant to 28 U.S.C. § 1915(e) (2)(B)(ii)] unless 10 it is absolutely clear that the deficiencies of the complaint could not be cured by 11 amendment.”).

12 III. Conclusion 13 Accordingly, good cause appearing, the Court: 14 1. VACATES the Court’s August 25, 2025, judgment and ORDERS the Clerk 15 of Court to reopen the case. 16 2. GRANTS Plaintiff’s Motion to Proceed IFP (ECF No. 2). 17 3. DIRECTS the Secretary of the CDCR, or his designee, to collect from 18 Plaintiff’s prison trust account the \$2.67 initial filing fee as well as the remaining \$347.33 19 balance of the \$350 filing fee owed in this case by collecting monthly payments from the 20 account, in an amount equal to twenty percent (20%) of the preceding month’s income, 21 and forwarding payments to the Clerk of Court each time the amount in the account exceeds 22 \$10 in accordance with 28 U.S.C. § 1915(b)(2).

The initial fee need be collected only if 23 sufficient funds are available in Plaintiff’s account at the time this Order is executed. 24 4. DIRECTS the Clerk of Court to serve a copy of this Order by U.S. Mail on 25 Jeff Macomber, Secretary, California Department of Corrections and Rehabilitation, P.O. 26 Box 942883, Sacramento, California, 94283-0001. 27 5.

DISMISSES Plaintiff's Complaint for failing to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A(b)(1) and 1 || GRANTS Plaintiff leave to file an amended complaint to cure the deficiencies of pleading 2 noted in this Order by or on January 15, 2026. 3 Plaintiff's amended complaint must be complete by itself without reference to the 4 || original pleading.

Defendants not named and any claim not re-alleged in his amended 5 ||complaint will be considered waived. See *Hal Roach Studios, Inc. v. Richard Feiner and 6 || Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the 7 || original.”). 8 If Plaintiff fails to file an amended complaint within the time provided, the 9 ||Court will dismiss the case without prejudice based on Plaintiff's failure to state a 10 claim upon which relief can be granted, pursuant to 28 U.S.C. §§ 1915(e)(2)(B) □□□□ & 11 ||1915A(b)Q), and his failure to prosecute in compliance with a court Order.

See *Lira 12 || v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of 13 ||the opportunity to fix his complaint, a district court may convert the dismissal of the 14 complaint into dismissal of the entire action.”) 15 IT IS SO ORDERED. 16 17 || DATED: November 21, 2025 (yatta Bahar te 18 H n. Cynthia Bashant, Chief Judge United States District Court 19 20 21 22 23 24 25 26 27 28 8 □