

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Mike Yang v. Sawagasa, et al.

No. 2:25-cv-1811 CSK P (E.D. Cal. July 7, 2025) · No. No. 2:25-cv-1811 CSK P · Decided July 7, 2025

SUMMARY

The Eastern District of California grants Mike Yang leave to proceed in forma pauperis and screens his 42 U.S.C. § 1983 complaint. The court finds potentially cognizable Eighth Amendment claims against Sawagasa concerning unsafe conditions of confinement and against Sawagasa and Dr. Alex Farrar concerning deliberate indifference to serious medical needs, while dismissing other claims with leave to amend. The court also denies without prejudice the motion for appointment of counsel and provides plaintiff with an election to proceed on the cognizable claims or amend the complaint.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Chi Soo Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 7, 2025
DOCKET	No. 2:25-cv-1811 CSK P
DISPOSITION	other
PROCEDURAL POSTURE	Screening order in a prisoner civil-rights action brought under 42 U.S.C. § 1983. The court considered plaintiff's request to proceed in forma pauperis, screened the complaint under 28 U.S.C. § 1915A, addressed plaintiff's motion for appointment of counsel, and gave plaintiff the option to proceed on specified claims or amend.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915A, the court must dismiss prisoner claims that are frivolous or malicious, fail to state a claim, or seek monetary relief from an immune defendant. In evaluating whether the complaint states a claim, the court accepts factual allegations as true, construes a pro se pleading liberally, and applies the Rule 8 and plausibility standards.
PRECEDENTIAL VALUE	unpublished
PARTIES	Mike Yang v. Sawagasa, Dr. Alex Farrar

TOPICS

prisoners rights

section 1983

civil rights

pleadings

cruel and unusual punishment

PRACTICE AREAS

civil procedure

prisoner civil rights

constitutional law

remedies

QUESTIONS PRESENTED

1. Whether plaintiff's complaint stated potentially cognizable Eighth Amendment claims against Sawagasa for unsafe conditions of confinement and deliberate indifference to serious medical needs.
2. Whether plaintiff stated an Eighth Amendment excessive-force claim against Sawagasa based on the accidental mace discharge, the order to clean the bedding, and the continued exposure.
3. Whether plaintiff stated deliberate-indifference, excessive-force, sexual-discrimination, due-process, or verbal-abuse claims against Dr. Alex Farrar.
4. Whether plaintiff qualified for appointment of counsel based on exceptional circumstances.
5. Whether plaintiff qualified to proceed in forma pauperis and was subject to the statutory prisoner filing-fee requirements.

HOLDINGS

1. The complaint states a potentially cognizable Eighth Amendment claim against Sawagasa based on unsafe conditions of confinement arising from the alleged continued mace exposure and denial of a cell move or replacement mattress.
2. The complaint states potentially cognizable Eighth Amendment deliberate-indifference claims against Sawagasa and Dr. Alex Farrar.
3. The complaint does not state an excessive-force claim against Sawagasa because plaintiff alleged that the mace canister accidentally discharged and alleged no facts showing that Sawagasa intentionally used force against him.
4. Plaintiff failed to state claims for sexual discrimination, due-process violations, excessive force against Farrar, or separate Eighth Amendment claims based solely on Farrar's verbal abuse and threats.
5. Plaintiff was not entitled to appointment of counsel because he failed to demonstrate exceptional circumstances.

KEY QUOTATIONS

"Thus, there are no facts supporting an excessive force claim against defendant Sawagasa. Instead, the Court finds that plaintiff states potentially cognizable Eighth Amendment claims against defendant Sawagasa for unsafe conditions of confinement, and deliberate indifference to plaintiff's serious medical needs." (at 8)

"The allegations in the complaint are sufficient to state potentially cognizable Eighth Amendment claims against defendant Sawagasa for unsafe conditions of confinement and against defendants Sawagasa and Dr. Alex Farrar for deliberate indifference to plaintiff's serious medical needs." (at 11)

FACTUAL BACKGROUND

Plaintiff alleged that a mace canister on Correctional Officer Sawagasa's lap belt accidentally discharged into his cell, after which Sawagasa required him to clean mace-soaked bedding and denied decontamination, a shower, a cell move, and a replacement mattress for 22 days. Plaintiff alleged respiratory, asthma, shoulder, and other injuries. He also alleged that Dr. Alex Farrar failed to provide adequate treatment for breathing difficulties, diabetes, and high blood pressure, and made derogatory statements and threats.

PROCEDURAL HISTORY

Plaintiff, a state prisoner proceeding pro se, filed a § 1983 complaint seeking damages and requested in forma pauperis status and appointment of counsel. The court granted in forma pauperis status, assessed the statutory filing fee and initial partial fee, found potentially cognizable Eighth Amendment claims, dismissed the remaining claims with leave to amend, and denied appointment of counsel without prejudice.

DISPOSITION

other

CASES CITED

- *Neitzke v. Williams*, 490 U.S. 319, 325, 327 (1989)
- *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984)
- *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989)
- *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)
- *Conley v. Gibson*, 355 U.S. 41, 47 (1957)
- *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)
- *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)
- *Helling v. McKinney*, 509 U.S. 25, 31 (1993)
- *Farmer v. Brennan*, 511 U.S. 825, 832, 834, 837 (1994)
- *Estelle v. Gamble*, 429 U.S. 97, 102, 104 (1976)
- *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)
- *Toussaint v. McCarthy*, 801 F.2d 1080, 1107 (9th Cir. 1986)
- *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)
- *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988)
- *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014)
- *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004)
- *Hudson v. McMillian*, 503 U.S. 1, 6-9 (1992)
- *Whitley v. Albers*, 475 U.S. 312, 321 (1986)
- *Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345, 1353 (9th Cir. 1981)

- *Kush v. Rutledge*, 460 U.S. 719 (1983)
- *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1982)
- *Ellingburg v. Lucas*, 518 F.2d 1196, 1197 (8th Cir. 1975)
- *Batton v. North Carolina*, 501 F. Supp. 1173, 1180 (E.D.N.C. 1980)
- *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)
- *Ramirez v. County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015)
- *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989)
- *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991)
- *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990)
- *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 MIKE YANG, No. 2:25-cv-1811 CSK P 12 Plaintiff, 13 v. ORDER 14
SAWAGASA, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding pro se. Plaintiff
seeks relief pursuant to 42 U.S.C. 18 § 1983 and requested leave to proceed in forma pauperis
pursuant to 28 U.S.C. § 1915.

This 19 proceeding was referred to this Court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)
(1). 20 Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a).
21 Accordingly, the request to proceed in forma pauperis is granted. 22 Plaintiff is required to pay
the statutory filing fee of \$350.00 for this action. 28 U.S.C. 23 §§ 1914(a), 1915(b)(1).

By this order, plaintiff is assessed an initial partial filing fee in 24 accordance with the provisions
of 28 U.S.C. § 1915(b)(1). By separate order, the Court will 25 direct the appropriate agency to
collect the initial partial filing fee from plaintiff's trust account 26 and forward it to the Clerk of
the Court. Thereafter, plaintiff is obligated to make monthly 27 payments of twenty percent of the
preceding month's income credited to plaintiff's trust account.

28 These payments will be forwarded by the appropriate agency to the Clerk of the Court each
time 1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28
U.S.C. 2 § 1915(b)(2). 3 As set forth below, plaintiff is granted an opportunity to proceed as to his
Eighth 4 Amendment claims against defendants Sawagasa and Dr. Alex Farrar, or plaintiff may
elect to 5 amend his complaint as discussed below.

6 I. SCREENING STANDARDS 7 The court is required to screen complaints brought by
prisoners seeking relief against a 8 governmental entity or officer or employee of a governmental
entity. 28 U.S.C. § 1915A(a). The 9 court must dismiss a complaint or portion thereof if the
prisoner raised claims that are legally 10 "frivolous or malicious," that fail to state a claim upon

which relief may be granted, or that seek 11 monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b)(1), (2). 12 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. 13 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984).

The court may, therefore, dismiss a claim as frivolous when it is based on an 15 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 16 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully 17 pleaded, has an arguable legal and factual basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir.

1989), superseded by statute as stated in *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 19 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably 20 meritless legal theories or whose factual contentions are clearly baseless.”); *Franklin*, 745 F.2d at 21 1227. 22 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain 23 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the 24 defendant fair notice of what the... claim is and the grounds upon which it rests.’” *Bell Atlantic 25 Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

26 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a 27 formulaic recitation of the elements of a cause of action;” it must contain factual allegations 28 sufficient “to raise a right to relief above the speculative level.” *Bell Atlantic*, 550 U.S. at 555. 1 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the 2 defendant fair notice of what the... claim is and the grounds upon which it rests.’” *Erickson v. 3 Pardus*, 551 U.S. 89, 93 (2007) (quoting *Bell Atlantic*, 550 U.S. at 555, citations and internal 4 quotations marks omitted).

In reviewing a complaint under this standard, the court must accept as 5 true the allegations of the complaint in question, *Erickson*, 551 U.S. at 93, and construe the 6 pleading in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 7 (1974), overruled on other grounds, *Davis v. Scherer*, 468 U.S. 183 (1984). 8 II. PLAINTIFF’S COMPLAINT 9 Plaintiff alleges that on September 19, 2021, the mace canister on defendant Correctional 10 Officer Sawagasa’s lap belt suddenly discharged, spreading two big bursts of mace¹ into 11 plaintiff’s cell, and the canister hit plaintiff’s left shoulder.

Defendant Sawagasa left, and another 12 correctional officer told plaintiff to leave to avoid the mace. But then defendant Sawagasa 13 returned and ordered plaintiff to clean the “massive mace” off plaintiff’s bedsheets. (ECF No. 1 14 at 4.) Plaintiff told defendant Sawagasa that plaintiff has chronic asthma and could not do it, but 15 defendant Sawagasa, also gagging and coughing, insisted plaintiff do it.

Plaintiff started 16 coughing, gagging, itching, became temporarily blind, and could not breathe, and also felt pain in 17 his left shoulder from where the mace canister hit him. Defendant Sawagasa denied plaintiff 18 decontamination and a shower, and refused plaintiff a cell move or a new mattress, and plaintiff 19 was required to sleep on the mace-soaked mattress for 22 days without any medical treatment.

20 (Id.) Plaintiff alleges defendant Sawagasa used excessive force by ordering plaintiff to clean up 21 the mace, causing plaintiff to inhale the mace, and requiring plaintiff to sleep on the mace-soaked 22 mattress for 22 days, and violated the Eighth Amendment by denying plaintiff decontamination or 23 a shower, and denying plaintiff a cell move; defendant Sawagasa was deliberately indifferent to 24 plaintiff's medical needs, subjected him to unsafe conditions of confinement, subjected plaintiff 25 to sexual discrimination, and violated the Due Process Clause of the Fourteenth Amendment.

(Id. 26 at 5.) 27 1 Plaintiff uses the terms "mace" and "pepper spray" interchangeably throughout his complaint. 28 (ECF No. 1, passim.) 1 As injuries, plaintiff suffered inhalation of toxic fumes, causing coughing, watery eyes, 2 burning, chest pain, itching, choking, gagging, stinging, severe difficulty breathing, chest pain, 3 sleep interference, and severe asthma injury.

(Id. at 4.) 4 In his second claim, plaintiff alleges that defendant Dr. Alex Farras refused plaintiff 5 medical treatment for his continued difficulty breathing since the pepper spray exposure on 6 September 21, 2021, and also refused to adequately treat plaintiff's diabetes and blood pressure, 7 causing his diabetes to go out of control² and his blood pressure to 177.

(Id. at 8.) Plaintiff 8 alleges that while he attempted to obtain medical treatment, defendant Farras called plaintiff 9 multiple derogatory names, and claimed to "send [plaintiff] out to prison so those blacks and 10 Mexican inmates can tak[e] care of your ass." (Id. at 7.) Defendant Dr. Alex Farras told plaintiff 11 he had no right to get medical treatment.

(Id. at 8.) 12 Plaintiff also claims that on or about "January to July 2023," defendant Dr. Alex Farras 13 called plaintiff a "bitch" in front of the other inmates in the dayroom. (Id. at 7.) Plaintiff alleges 14 that due to this he went back to his cell for fear of being beaten and assaulted. (Id.) 15 Plaintiff claims the actions of defendant Dr. Alex Farras violated the Eighth Amendment 16 by denying plaintiff medical care from April 2021 to July 2023, but also claims "unsafe 17 conditions, sexual discrimination and excessive force," and a due process violation, and alleges 18 separate Eighth Amendment violations based on defendant Dr. Alex Farras' verbal abuse and 19 threats.

(Id. at 8.) 20 As injuries, plaintiff claims his severe asthma developed into bronchitis, making it 21 difficult for him to breathe. (Id. at 4.) Plaintiff suffered injury from the pepper spray, increased 22

blood pressure and possibly increased blood sugar. (Id. at 7.) 23 Plaintiff seeks money damages. 24 /// 25 2 Plaintiff claims it caused his diabetes to go up to 369 “milliates.” (Id. at 7, 8.)

However, plaintiff does not define “milliates,” and it is not in the dictionary. To the extent plaintiff refers to 26 a 369 reading on a blood glucose test, it appears his blood sugar was not well controlled. 27 “[A]ccording to the World Health Organization, a normal fasting blood sugar level is between 70- 100 mg/dL.” *Est. of Martinez v. Cnty. of L.A.*, 2024 WL 3891061, at *2 (C.D.

Cal. Aug. 21, 28 2024). 1 III. RELEVANT EIGHTH AMENDMENT STANDARDS 2 A. Eighth Amendment – Conditions of Confinement 3 The treatment a prisoner receives in prison and the conditions under which the prisoner is 4 confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel and unusual 5 punishment. See *Helling v. McKinney*, 509 U.S. 25, 31 (1993); *Farmer v. Brennan*, 511 U.S. 6 825, 832 (1994).

The Eighth Amendment “embodies broad and idealistic concepts of dignity, 7 civilized standards, humanity, and decency.” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). 8 Conditions of confinement may, however, be harsh and restrictive. See *Rhodes v. Chapman*, 452 9 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with “food, clothing, 10 shelter, sanitation, medical care, and personal safety.” *Toussaint v. McCarthy*, 801 F.2d 1080, 11 1107 (9th Cir.

1986). A prison official violates the Eighth Amendment only when two 12 requirements are met: (1) objectively, the official’s act or omission must be so serious such that it 13 results in the denial of the minimal civilized measure of life’s necessities; and (2) subjectively, 14 the prison official must have acted unnecessarily and wantonly for the purpose of inflicting harm.

15 See *Farmer*, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison official must have 16 a “sufficiently culpable mind.” See *id.* 17 B. Eighth Amendment Claim: Medical Care 18 A prisoner’s claim of inadequate medical care does not constitute cruel and unusual 19 punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of 20 “deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.

21 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). Deliberate indifference may be 22 shown by the denial, delay, or intentional interference with medical treatment or by the way in 23 which medical care is provided. *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988). 24 The two-part test for deliberate indifference requires plaintiff to show (1) “a ‘serious medical 25 need’ by demonstrating that failure to treat a prisoner’s condition could result in further 26 significant injury or the ‘unnecessary and wanton infliction of pain,’” and (2) “the defendant’s 27 response to the need was deliberately indifferent.” *Jett*, 439 F.3d at 1096.

A defendant does not 28 /// 1 act in a deliberately indifferent manner unless the defendant “knows of and disregards an 2 excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825,

837 (1994). 3 Negligence allegations are insufficient. Deliberate indifference “requires more than 4 ordinary lack of due care.” *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir.

2014) (quoting 5 *Farmer*, 511 U.S. at 835). The indifference to the prisoner’s medical needs must be substantial -- 6 negligence, inadvertence, or differences in medical judgment or opinion do not rise to the level of 7 a constitutional violation. *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004) (negligence 8 constituting medical malpractice is not sufficient to establish an Eighth Amendment violation).

9 C. Eighth Amendment Claim: Excessive Force 10 “In its prohibition of ‘cruel and unusual punishments,’ the Eighth Amendment places 11 restraints on prison officials, who may not... use excessive physical force against prisoners.” 12 *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). “[W]henever prison officials stand accused of 13 using excessive physical force in violation of the [Eighth Amendment], the core judicial inquiry 14 is... whether force was applied in a good-faith effort to maintain or restore discipline, or 15 maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992).

16 When determining whether the force was excessive, the court looks to the “extent of 17 injury suffered by an inmate... the need for application of force, the relationship between that 18 need and the amount of force used, the threat ‘reasonably perceived by the responsible officials,’ 19 and ‘any efforts made to temper the severity of a forceful response.’” *Hudson*, 503 U.S. at 7 20 (quoting *Whitley v. Albers*, 475 U.S. 312, 321 (1986)).

While de minimis uses of physical force 21 generally do not implicate the Eighth Amendment, significant injury need not be evident in the 22 context of an excessive force claim, because “[w]hen prison officials maliciously and sadistically 23 use force to cause harm, contemporary standards of decency always are violated.” *Hudson*, 503 24 U.S. at 9. 25 IV. DISCUSSION 26 Plaintiff claims that defendant Sawagasa used excessive force by ordering plaintiff to 27 clean up the mace soaked bedsheets, by forcing plaintiff to inhale the massive amounts of mace, 28 and to remain in the vapor-soaked cell.

(ECF No. 1 at 5.) However, the Court does not construe 1 plaintiff’s allegations as stating excessive force claims against defendant Sawagasa, but rather as 2 subjecting plaintiff to unsafe conditions of confinement and deliberate indifference to plaintiff’s 3 serious medical needs in violation of the Eighth Amendment. Plaintiff does not allege that 4 defendant Sawagasa intentionally sprayed plaintiff or his cell with mace or pepper spray; rather, 5 he alleges the canister suddenly exploded.

Plaintiff includes no facts showing defendant 6 Sawagasa used any force against plaintiff during the alleged incident. Thus, there are no facts 7 supporting an excessive force claim against defendant Sawagasa. Instead, the Court finds that 8 plaintiff states potentially cognizable Eighth

Amendment claims against defendant Sawagasa for 9 unsafe conditions of confinement, and deliberate indifference to plaintiff's serious medical needs.

10 In addition, the Court finds plaintiff states potentially cognizable Eighth Amendment 11 claims against Dr. Alex Farras for deliberate indifference to plaintiff's serious medical needs. 12 However, as to both defendants, plaintiff includes no facts supporting sexual 13 discrimination claims or due process violations, and he includes no facts supporting an excessive 14 force claim against defendant Dr. Alex Farras.

Rather, plaintiff simply refers to these alleged 15 violations, in vague and conclusory fashion, at the end of the factual allegations as to defendant 16 Dr. Alex Farras. (ECF No. 1 at 5, 8.) None of plaintiff's factual allegations support such claims. 17 In addition, plaintiff's allegations concerning defendant Dr. Alex Farras' verbal abuse and 18 threats, while repugnant, do not state separate Eighth Amendment claims.

Allegations of 19 harassment, embarrassment, and defamation are not cognizable under section 1983. *Rutledge v. 20 Arizona Bd. of Regents*, 660 F.2d 1345, 1353 (9th Cir. 1981), *aff'd sub nom. Kush v. Rutledge*, 21 460 U.S. 719 (1983); see also *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir.1982) 22 (allegations of harassment with regards to medical problems not cognizable); *Ellingburg v. Lucas*, 23 518 F.2d 1196, 1197 (8th Cir.

1975) (Arkansas state prisoner does not have cause of action under 24 § 1983 for being called obscene name by prison employee); *Batton v. North Carolina*, 501 25 F.Supp. 1173, 1180 (E.D.N.C. 1980) (mere verbal abuse by prison officials does not state claim 26 under § 1983). Nor are allegations of mere threats cognizable. See *Gaut v. Sunn*, 810 F.2d 923, 27 925 (9th Cir.

1987) (mere threat does not constitute constitutional wrong, nor do allegations that 28 naked threat was for purpose of denying access to courts compel contrary result). 1 V. PLAINTIFF'S OPTIONS 2 Plaintiff may proceed forthwith to serve defendants Sawagasa and Dr. Alex Farrar and 3 pursue only the potentially cognizable Eighth Amendment claims against those defendants 4 identified above, or plaintiff may delay serving any defendant and attempt to state additional 5 cognizable claims against those two defendants.

If plaintiff elects to proceed forthwith against 6 defendants Sawagasa and Dr. Alex Farrar, against whom he stated potentially cognizable Eighth 7 Amendment claims for relief, then within thirty days plaintiff must so elect on the attached form. 8 In this event the Court will construe plaintiff's election as consent to dismissal of the remaining 9 claims against defendants Sawagasa and Dr. Alex Farrar without prejudice.

Under this option, 10 plaintiff does not need to file an amended complaint. 11 Or, plaintiff may delay serving any defendant and attempt again to state additional 12 cognizable claims against

defendants. If plaintiff elects to amend his complaint to attempt to state 13 additional cognizable claims against defendants Sawagasa and Dr. Alex Farrar, plaintiff has thirty 14 days to amend.

Plaintiff is not granted leave to add new claims or new defendants. 15 Any amended complaint must show the federal court has jurisdiction, the action is brought 16 in the right place, plaintiff has complied with the California Government Claims Act, and plaintiff 17 is entitled to relief if plaintiff's allegations are true. It must contain a request for particular relief.

18 Plaintiff must identify as a defendant only persons who personally participated in a substantial 19 way in depriving plaintiff of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 20 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an 21 act, participates in another's act, or omits to perform an act he is legally required to do that causes 22 the alleged deprivation).

23 A district court must construe a pro se pleading "liberally" to determine if it states a claim 24 and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an 25 opportunity to cure them. See *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While 26 detailed factual allegations are not required, "[t]hreadbare recitals of the elements of a cause of 27 action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 28 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Plaintiff 1 must set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is 2 plausible on its face.'" *Ashcroft*, 556 U.S. at 678 (quoting *Bell Atlantic Corp.*, 550 U.S. at 570). 3 A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the 4 defendant is liable for the misconduct alleged.

The plausibility standard is not akin to a "probability requirement," but it asks for 5 more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a 6 defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. 7 8 *Ashcroft*, 556 U.S. at 678 (citations and quotation marks omitted).

Although legal conclusions 9 can provide the framework of a complaint, they must be supported by factual allegations, and are 10 not entitled to the assumption of truth. *Id.* 11 An amended complaint must be complete in itself without reference to any prior pleading. 12 Local Rule 220; see *Ramirez v. County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) 13 ("an 'amended complaint supersedes the original, the latter being treated thereafter as non- 14 existent.'" (internal citation omitted)).

Once plaintiff files an amended complaint, the original 15 pleading is superseded. Plaintiff is not granted leave to add new claims or new defendants. 16 VI. MOTION FOR APPOINTMENT OF COUNSEL 17 Plaintiff requests that the Court appoint counsel. District courts lack authority to

require 18 counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist.*

19 Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney 20 to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 21 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). 22 When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s 23 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro 24 se in light of the complexity of the legal issues involved.

Palmer v. Valdez, 560 F.3d 965, 970 25 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The 26 burden of demonstrating exceptional circumstances is on the plaintiff. *Id.* Circumstances 27 common to most prisoners, such as lack of legal education and limited law library access, do not 28 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

1 Having considered the factors under *Palmer*, the Court finds that plaintiff has failed to 2 meet his burden of demonstrating exceptional circumstances warranting the appointment of 3 counsel at this time. 4 VII. ORDERS 5 Accordingly, IT IS HEREBY ORDERED that: 6 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is granted. 7 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

Plaintiff 8 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. 9 § 1915(b)(1). All fees shall be collected and paid in accordance with this Court’s order to the 10 Director of the California Department of Corrections and Rehabilitation filed concurrently 11 herewith. 12 3.

The allegations in the complaint are sufficient to state potentially cognizable Eighth 13 Amendment claims against defendant Sawagasa for unsafe conditions of confinement and against 14 defendants Sawagasa and Dr. Alex Farrar for deliberate indifference to plaintiff’s serious medical 15 needs. See 28 U.S.C. § 1915A. If plaintiff chooses to proceed solely as to such claims, plaintiff 16 shall so indicate on the attached form and return it to the Court within thirty days from the date of 17 this order.

In this event, the Court will construe plaintiff’s election to proceed forthwith as 18 consent to an order dismissing the defective claims without prejudice. 19 4. The remaining claims against defendants Sawagasa and Dr. Alex Farrar are dismissed 20 with leave to amend. Within thirty days of service of this order, plaintiff may amend his 21 complaint to attempt to state additional cognizable claims against defendants Sawagasa and Dr. 22 Alex Farrar.

Plaintiff is not obligated to amend his complaint. 23 5. Failure to comply with this order will result in a recommendation that this action 24 proceed solely on the cognizable claims identified above.

25 /// 26 /// 27 /// 28 /// 1 6. Plaintiff's motion for the appointment of counsel (ECF No. 3) is denied without 2 || prejudice. 3 4 | Dated: July 7, 2025 Cin ☐☐☐ CHI 500 KIM 6 UNITED STATES MAGISTRATE JUDGE 7 || /fyang1811.140 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 11 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 MIKE YANG, No. 2:25-cv-1811 CSK P 12 Plaintiff, 13 v. NOTICE OF ELECTION 14 SAWAGASA, et al., 15 Defendants.

16 17 Plaintiff elects to proceed as follows: 18 _____ Plaintiff opts to proceed with his Eighth Amendment claims challenging the conditions of confinement against defendant Sawagasa, and the 19 deliberate indifference to plaintiff's serious medical needs against 20 defendants Sawagasa and Dr. Alex Farrar.

Under this option, plaintiff consents to dismissal, without prejudice, of the remaining claims against 21 defendants Sawagasa and Dr. Alex Farrar, including excessive force, sexual discrimination, due process violations, and verbal abuse and threats. 22 OR 23 _____ Plaintiff opts to file an amended complaint and delay service of process. 24 25 DATED: 26 _____ Plaintiff 27 28