

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

Elijah Paul Lopez v. Luhan, et al.

Lopez v. Luhan · No. 2:24-cv-01321-EFB (PC) · Decided November 10, 2025

OPINION

Luhan

PER CURIAM.

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7 UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF CALIFORNIA

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10 ELIJAH PAUL LOPEZ, No. 2:24-cv-01321-EFB (PC)

11 Plaintiff, 12 v. ORDER 13 LUHAN, et al., 14 Defendants. 15 16 Plaintiff is a state prisoner
proceeding without counsel in an action brought under 42 17 U.S.C. § 1983. This proceeding was
referred to this court by Local Rule 302 pursuant to 28 18 U.S.C. § 636(b)(1). The court screened
plaintiff’s original complaint on July 17, 2025, finding a 19 potentially cognizable Eighth
Amendment excessive force claim against defendant Luhan. ECF

20 No. 14. The court gave plaintiff the option of proceeding on the claim against Luhan or filing
an

21 amended complaint to attempt to cure the deficiencies in the complaint’s remaining claims. 22
Plaintiff has opted to, and has filed, an amended complaint. ECF No. 17. 23 Motion for Extension
of Time 24 Plaintiff has shown good cause for not filing the amended complaint by the August 17,
25 2025 deadline set by the original screening order. ECF No. 15. Accordingly, the court will
grant 26 his request for an extension of time to file the amended complaint, nunc pro tunc. 27 ///
28 /// 1 Screening Standards 2 Federal courts must engage in a preliminary screening of cases in
which prisoners seek 3 redress from a governmental entity or officer or employee of a
governmental entity. 28 U.S.C. 4 § 1915A(a). The court must identify cognizable claims or
dismiss the complaint, or any portion 5 of the complaint, if the complaint “is frivolous, malicious,
or fails to state a claim upon which 6 relief may be granted,” or “seeks monetary relief from a
defendant who is immune from such 7 relief.” Id. § 1915A(b). 8 A pro se plaintiff, like other
litigants, must satisfy the pleading requirements of Rule 8(a) 9 of the Federal Rules of Civil
Procedure. Rule 8(a)(2) “requires a complaint to include a short and 10 plain statement of the
claim showing that the pleader is entitled to relief, in order to give the 11 defendant fair notice of
what the claim is and the grounds upon which it rests.” Bell Atl. Corp. v. 12 Twombly, 550 U.S.
544, 554, 562-563 (2007) (citing Conley v. Gibson, 355 U.S. 41 (1957)). 13 While the complaint

must comply with the “short and plain statement” requirements of Rule 8, 14 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). 16 To avoid dismissal for failure to state a claim a complaint must contain more than “naked 17 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of 18 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of 19 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at 20 678. 21 Furthermore, a claim upon which the court can grant relief must have facial plausibility. 22 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual 23 content that allows the court to draw the reasonable inference that the defendant is liable for the 24 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a 25 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v. 26 Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the 27 plaintiff, see *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). 28 //// 1 Screening Order 2 Plaintiff alleges that he was assaulted by defendant Correctional Officer Luhan and others. 3 ECF No. 16 at 3. Plaintiff has again stated a potentially cognizable Eighth Amendment excessive 4 force claim against Luhan. As in the original complaint, he has named Officers Chavez and 5 Pohovich as defendants, but he does not mention these defendants in his description of the assault 6 or provide any facts at all concerning them. For this reason, the court dismissed plaintiff’s claims 7 against Chavez and Pohovich in the original screening order. Plaintiff states, “I cannot describe 8 the correctional staff positions during the assault because after C/O Luhan pushed me forward . . . 9 I couldn’t see anything.” ECF No. 16 at 3. Plaintiff need not describe defendants’ positions, but 10 he must allege some facts from which it could be concluded that Chavez and Pohovich were 11 involved in the assault. As he has not done so, his claims against these defendants must again be 12 dismissed. Plaintiff may attempt one last time to amend this claim, or he may proceed on his 13 claim against Luhan. If Chavez and Pohovich participated in the assault, plaintiff must say so in 14 his complaint and state what facts he is aware of as to their involvement. If plaintiff does not 15 currently know the identities of other correctional staff involved in the assault, he may move to 16 amend the complaint at a later date to name officers he has identified through prison 17 administrative processes, discovery in this action, or any other method. 18 Plaintiff has again failed to state a claim against prison medical staff concerning the care 19 he received following the assault. To state an Eighth Amendment claim predicated on 20 indifference to medical needs, a plaintiff must allege facts showing that: (1) he had a serious 21 medical need and (2) the defendant’s response to that need was deliberately indifferent. *Jett v. 22 Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); see also *Estelle v. Gamble*, 429 U.S. 97, 106 23 (1976). A serious medical need exists if the failure to treat the condition could result in further 24 significant injury or the unnecessary and wanton infliction of pain. *Jett*, 439 F.3d at 1096. To act 25 with deliberate indifference, a prison official must both be aware of facts from which the 26 inference could be drawn that a substantial risk of serious harm exists, and he must also draw the

27 inference. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Plaintiff has again failed to allege that
28 his injuries required immediate and/or different treatment, that he was harmed by the delay in 1
and/or deficient treatment, or that his caregivers inferred that a delay in treatment (or the 2
treatment he was ultimately provided) would subject plaintiff to a substantial risk of serious harm.
3 Plaintiff will be provided one more opportunity to amend the complaint to attempt to 4 correct
these deficiencies. Plaintiff is not obligated to amend the complaint; he may instead 5 choose to
proceed only on his claim against Luhan. 6 Leave to Amend 7 If plaintiff chooses to file an
amended complaint, he should note that any amended 8 complaint must identify as a defendant
only persons who personally participated in a substantial 9 way in depriving him of a federal
constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
10 Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an
act,

11 participates in another's act or omits to perform an act he is legally required to do that causes
the 12 alleged deprivation). 13 Further, any amended complaint must be written or typed so that it
so that it is complete in 14 itself without reference to any earlier filed complaint. E.D. Cal. L.R.
220. This is because an 15 amended complaint supersedes any earlier filed complaint, and once an
amended complaint is 16 filed, the earlier filed complaint no longer serves any function in the
case. See *Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint
supersedes the original, 18 the latter being treated thereafter as non-existent.”) (quoting *Loux v.*
Rhay, 375 F.2d 55, 57 (9th
19 Cir. 1967)).

20 The court cautions plaintiff that failure to comply with the Federal Rules of Civil 21 Procedure,
this court's Local Rules, or any court order may result in this action being dismissed. 22 See Local
Rule 110. 23 Conclusion 24 Accordingly, IT IS ORDERED that: 25 1. Plaintiff's motion for
extension of time (ECF No. 15) is GRANTED nunc pro tunc. 26 2. Plaintiff has stated a
potentially cognizable claim for violation of the Eighth 27 Amendment against defendant Luhan.
28 3. All other claims are dismissed with leave to amend within 30 days of service of this] order.
Plaintiff is not obligated to amend his complaint. 2 4. Within 21 days plaintiff shall return the
notice below advising the court whether he 3 elects to proceed with the cognizable claim or file an
amended complaint. If the 4 former option is selected and returned, the court will enter an order
directing service at 5 that time. 6 5. Failure to comply with any part of this this order may result in
dismissal of this action. 8 || Dated: November 10, 2025 LA t? bitin, Fe Lptt_*9

EDMUND F. BRENNAN

9 UNITED STATES MAGISTRATE JUDGE

10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 ELIJAH PAUL LOPEZ, No. 2:24-cv-01321-EFB (PC)

12 Plaintiff,

13 v. NOTICE OF ELECTION

14 LUHAN, et al., 15 Defendants. 16 17 In accordance with the court's Screening Order, plaintiff

hereby elects to: 18 19 (1) _____ proceed only with the Eighth Amendment claim against Luhan.

20 21 OR 22 23 (2) _____ delay serving any defendant and file a second amended complaint. 24

25 _____ 26 Plaintiff 27 Dated: 28