

1 Having reviewed the record and the briefs, and for the reasons set forth below, the Court
2 GRANTS the Commonwealth and official capacity Defendants' motions and DISMISSES the case
3 against them. It also GRANTS the personal capacity Defendants' motion to dismiss, but Plaintiff is
4 GRANTED limited leave to amend his claims against some of the personal capacity Defendants.

5 II. FACTUAL BACKGROUND

6 The facts alleged in Plaintiff Camacho's original letter to the Court (ECF No. 1) and amended
7 complaint (ECF No. 4, 4-1)² are as follows: On the night of August 30, 2017, Camacho was
8 transported to the emergency room with chest pains, difficulty breathing and near loss of
9 consciousness. (ECF No. 1 at 1.) In the emergency room, his vital signs were taken, and he saw a
10 doctor who, without conducting any tests, told him that he was suffering from anxiety. (*Id.*; ECF No.
11 4-1 at 12.) Camacho was returned to the prison without any medications. (ECF No. 1 at 1.) The next
12 evening, on August 31 at 5:30 p.m., Camacho again experienced chest pain, difficulty breathing, and
13 light-headedness. (*Id.*) He reported these symptoms to a corrections officer (who is not a defendant in
14 this matter) and asked to go to the hospital. (*Id.*) Instead, EMTs were called to the prison to attend to
15 him. (*Id.*) The EMTs checked Camacho's vital signs and found them to be normal, but suggested that
16 the officers bring him to the hospital. (*Id.*) Two other officers told Camacho that he would have to
17 wait until the shift change at 7:00 p.m., and that they were awaiting a phone call from the commanders,
18 Lieutenant Frances Rebuénog and Commander Lorraine Rios (both named Defendants). (*Id.* at 2;
19 ECF No. 4-1 at 2-3.) He was finally told that he would be taken to the hospital the next day. (ECF No.
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22 ² Plaintiff also filed a letter regarding these facts that was docketed as the first five pages of ECF No. 5 in
23 *Camacho v. CNMI Dep't of Corrections*, 18-cv-00009.

1 at 2.)

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2 On the morning of the third day, September 1, Camacho continued to ask officers when they
3 would take him to the hospital. (*Id.*) He was told that, per Lieutenant Rebuenog, they would call the
4 EMTs to come again instead of taking him to the hospital. (*Id.*) The EMTs arrived and recommended
5 that Camacho be brought to the hospital, but Commander Rios decided against taking him to hospital,
6 instead just allowing him to use a nebulizer. (*Id.*) By 2:40 p.m., Camacho reported that his pain was
7 worsening to an officer, who was given permission by Lieutenant Rebuenog to take Camacho to the
8 mini-court for some fresh air and was told that they would call the EMTs again. (*Id.*; ECF No. 4-1 at
9 2.) About two hours later, Camacho telephoned his aunt to ask her to call DOC to ask them to bring
10 him to the hospital, but she was unable to get through. (ECF No. 1 at 2–3.) At 7:00 p.m., during the
11 shift change, Camacho again asked an officer to take him to the hospital because he was suffering
12 from chest pains. (*Id.* at 3.) Two officers told him he looked pale. (*Id.*) He then slid to the floor and
13 blacked out. (*Id.*) Only then was Camacho brought to the hospital, where he was hooked up to an
14 EKG and subsequently told by a doctor that he was having a heart attack. (*Id.*) His doctor told one of
15 the officers that “what [he was] going through could have been prevented if [he had been] taken up to
16 the hospital sooner.” (*Id.*)

18 Camacho remained in the hospital until September 7, 2017. (*Id.*) When he was discharged, his
19 doctor advised him to have a follow-up appointment at the FCC (Family Care Clinic)³ in one week
20 and to see a heart specialist in Hawaii as soon as possible. (*Id.*) Defendant Nina Aldan, DOC Medical
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22 ³ Plaintiff did not explain what FCC stands for. However, in the division of hospital services in the CNMI, the
23 acronym FCC is used to refer to the Family Care Clinic, an outpatient clinic.

1 Officer, failed to make a follow-up appointment for Camacho at the FCC; it was an ER doctor that
2 made the appointment for him. (ECF No. 4-1 at 3-4.) She also told him that they could not send him
3 off-island because there is no money. (ECF No. 1 at 3.)

4 On October 17, 2017, Camacho was taken to Guam for a second opinion. (*Id.*) There, a doctor
5 performed a cardiac catheterization and diagnosed him with severe four-vessel coronary artery disease.
6 (*Id.* at 4.) The next day, Camacho complained of chest pains and was taken to the hospital, where he
7 discussed his treatment options with his doctors. (*Id.*) Camacho opted for bypass surgery. (*Id.*) The
8 doctors recommended Camacho be flown to Los Angeles for the surgery as soon as possible, but DOC
9 delayed. (*Id.*) He was transported to Los Angeles about a month later, where he had the surgery the
10 next day. (*Id.*) Camacho returned to Saipan two weeks later. (*Id.*) He claims he is now disabled, but
11 did not provide details regarding his disability. (*Id.*)

12 III. PROCEDURAL HISTORY

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14 On March 13, 2018, this Court received Camacho's letter relaying the above facts. The Court
15 construed his letter as a civil rights complaint under 42 U.S.C. § 1983 alleging deliberate indifference
16 to his serious medical needs as a prisoner in violation of the Eighth Amendment, and made applicable
17 to the states by the Fourteenth Amendment. (Order to Amend Complaint at 1, ECF No. 2.) The Court
18 ordered Camacho to amend his complaint to indicate which officials and entities he intended to name
19 as defendants. (*Id.* at 2.) In response, Camacho filed a complaint using Pro Se Form 14 (Complaint for
20 Violation of Civil Rights (Prisoner)) as well as a handwritten list of eleven Defendants explaining the
21 basis of his claim against each person. (ECF Nos. 4, 4-1.) He named as defendants the following
22 individuals: Commissioner Vincent Attao, Director of Civil Division Georgia Cabrera, Captain Jose
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1 Pangelinan, Captain Pius Yaroitemal, the late Lieutenant Frances Rebuenog, Lieutenant Manuel
2 Quitano, Sergeant Frederick Billy, COIII Cynthia Santos, COIII Lorraine Rios, COIII Benjamin
3 Lizama, and COII Nina Aldan. (ECF No. 4-1 at 1.) In his handwritten exhibit, Camacho did not
4 indicate whether he was suing the named persons in their individual or official capacities. However,
5 on the pro se form he indicated that he was suing four⁴ defendants in their official capacity only –
6 Cabrera, Rebuenog, Rios, and Lizama.

7 On August 21, 2018, the Commonwealth filed a motion to correct misjoinder of DOC and
8 dismiss for failure to state a claim. (ECF No. 36.) First, the Commonwealth moved to substitute itself
9 for DOC because DOC lacks the capacity to be sued. Second, it moved to dismiss the claims against
10 the Commonwealth and all official capacity Defendants because they are not “persons” within the
11 meaning of § 1983. The personal capacity Defendants separately filed a 12(b)(6) motion to dismiss
12 for failure to state a claim. (ECF Nos. 37, 42.) Camacho filed a response in which he did not address
13 the arguments put forth by Defendants, but instead he restated his claims against nine⁵ of the named
14 defendants and quantified the monetary damages sought. (ECF No. 44.)
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20 ⁴ Pro Se Form 14 provides space to name four defendants and boxes to check to indicate if bringing the
complaint against them in their individual capacity, official capacity or both. (ECF No 4 at 2–3.)

21 ⁵ Camacho did not restate his claims against two of the originally named Defendants: Frances Rebuenog and
22 Cynthia Santos. Rebuenog passed away in February 2018. (ECF No. 42 at 4 n.2; Proof of Service, ECF No.
23 29.) The summons issued as to Santos was returned unexecuted as she no longer works at DOC and reportedly
moved to the U.S. mainland. (ECF No. 34.)

IV. ANALYSIS

a. DOC lacks the capacity to sue or be sued

Defendant Commonwealth asserts that DOC must be dismissed from the case because it is a non-jural entity that lacks the capacity to sue or be sued. (CNMI Memo. at 7, ECF No. 36-1.) “[T]he court may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. It is within the discretion of the court to permit the substitution of a party, but the court is not obligated to do so. *Mendoza v. Nordstrom, Inc.*, 865 F.3d 1261, 1266 (9th Cir. 2017). The capacity of a governmental entity to be sued in federal court is determined by the law of the state where the district court is located. Fed. R. Civ. P. 17(b); *see also Shaw v. State of California Dep’t of Alcoholic Beverage Control*, 788 F.2d 600, 604 (9th Cir. 1986) (“Under Rule 17(b) of the Federal Rules of Civil Procedure, the [San Jose] Police Department’s capacity to be sued in federal court is to be determined by the law of California.”). To raise a party’s capacity to sue or be sued, “a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party’s knowledge.” Fed. R. Civ. P. 9(a).

Here, Commonwealth law is silent as to DOC’s capacity to sue or be sued. Defendant asks the Court to interpret that silence as an intentional legislative act denying DOC the capacity to sue or be sued, by applying the doctrine of *expressio unius est exclusio alterius*.⁶ (CNMI Memo. at 8.) The impact of legislative silence depends on context. The U.S. Supreme Court has “long held that the *expressio unius* canon does not apply ‘unless it is fair to suppose that Congress considered the

⁶ The doctrine of *expressio unius est exclusio alterius* is canon of statutory interpretation that finds the inclusion of one thing implies the exclusion of the alternative. Black’s Law Dictionary (10th ed. 2014)

1 unnamed possibility and meant to say no to it.” *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 381
2 (2013) (quoting *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003)).

3 This Court recently addressed the application of *expressio unius est exclusio alterius* to
4 legislative silence regarding the capacity of CNMI agencies to sue or be sued in two cases. First, in
5 *Norita v. CNMI Department of Public Safety*, the Court stated:

6 The Commonwealth Supreme Court recognized the express inclusion of the
7 phrase “to sue or be sued” as a limited legislative waiver of sovereign immunity.
8 *Pangelinan v. NMI Retirement Fund*, 2009 MP 12 ¶ 26 (“When the legislature
9 opened the door for lawsuits against the Retirement Fund, it waived its immunity
10 from damages, but in doing so did not also expressly waive the Fund’s immunity
11 from interest on those damages.”) A waiver of sovereign immunity is no small
12 act. It is fair to infer that the CNMI legislature considered whether agencies
13 should retain immunity when creating them. Moreover, such a waiver must be
14 unequivocal, either in express language or “by such overwhelming implications
15 from the text as [will] leave no room for any other reasonable construction.”
16 *Ramsey v. Muna*, 849 F.3d 858, 860–61 (9th Cir. 2017) (quoting *Edelman v.*
17 *Jordan*, 415 U.S. 651, 673 (1974)). The Commonwealth Supreme Court also
18 acknowledged a distinction between “sue and be sued” agencies and those that
19 are not “sue and be sued.” *Marine Revitalization Corporation v. Department of*
20 *Land and Natural Resources (Marine Revitalization II)*, 2011 MP 2 ¶ 17. Neither
21 party has pointed to, nor has this Court found, any instance in the Commonwealth
22 Code in which an agency is expressly denied the capacity to sue or be sued. If
23 there are two distinct groups of agencies, those with capacity and those without,
24 it follows that legislative silence was intended to mean an agency lacks the
capacity to sue and be sued.

18 Decision and Order Substituting CNMI, No. 1:18-cv-00022, at 16 (Jan. 10, 2019, ECF No. 15). Next,
19 in *Manila v. CNMI Department of Corrections*, the Court applied this analysis to DOC and held that
20 it lacks the capacity to sue or be sued. Order Granting CMNI’s Motion to Correct Misjoinder, No.
21 1:18-cv-00003, at 5 (Jan. 24, 2019, ECF No. 33). For the same reasons, Defendants’ motion to correct

1 misjoinder is granted. The Department of Corrections is dismissed as a party from this matter, and
2 pursuant to Fed. R. Civ. P. 21, the Commonwealth is substituted in its place.

3 **b. CNMI and official capacity Defendants are not “persons” within the meaning of**
4 **§ 1983**

5 Defendants argue that Plaintiff has failed to state a claim against the CNMI and official
6 capacity Defendants because he is suing for damages, not prospective relief, and therefore the § 1983
7 claims against them must be dismissed. (CNMI Memo. at 11.) The Court agrees.

8 To survive a motion to dismiss for failure to state a claim upon which relief can be granted
9 under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a pleading “must contain sufficient factual
10 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556
11 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint
12 “must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing
13 party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). Additionally,
14 “the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that
15 it is not unfair to require the opposing party to be subjected to the expense of discovery and continued
16 litigation.” *Id.* However, *pro se* complaints are held to less stringent standards than pleadings filed by
17 lawyers, and “can only be dismissed for failure to state a claim if it appears beyond doubt that the
18 plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Estelle v.*
19 *Gamble*, 429 U.S. 97, 106 (1976) (quotations omitted).

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21 Section 1983 provides a remedy to injured parties deprived of their constitutional rights by a
22 state official’s abuse of position. *Hafer v. Melo*, 502 U.S. 21, 27 (1991). Specifically, the statute
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1 provides that:

2 Every *person* who, under color of any statute, ordinance, regulation, custom, or usage,
3 of any State or Territory or the District of Columbia, subjects, or causes to be subjected,
4 any citizen of the United States or other person within the jurisdiction thereof to the
deprivation of any rights, privileges, or immunities secured by the Constitution and
laws, shall be liable to the party injured . . .

5 42 U.S.C. § 1983 (emphasis added). However, it is well established that “neither the CNMI nor its
6 officers acting in their official capacity can be sued under § 1983” because they are not persons within
7 the meaning of the statute. *DeNieva v. Reyes*, 966 F.2d 480, 483 (9th Cir. 1992) (citing *Will v.*
8 *Michigan Department of State Police*, 491 U.S. 58, 71 (1989)). Section 1983 suits for money damages
9 against CNMI official capacity defendants are not permitted because the judgment would affect the
10 public treasury, making the Commonwealth the real party in interest. *See Paeste v. Gov’t of Guam*,
11 798 F.3d 1228, 1235 (9th Cir. 2015) (citing *Ngiraingas v. Sanchez*, 495 U.S. 182, 184 (1990)).
12 However, “the rule is entirely different with regard to prospective relief,” and lawsuits for injunctions
13 or declaratory judgments under § 1983 may proceed against official capacity defendants. *Id.* at 1236;
14 *see also Will*, 491 U.S. at 71 (“Of course a state official in his or her official capacity, when sued for
15 injunctive relief, would be a person under § 1983 because official-capacity actions for prospective
16 relief are not treated as actions against the State.”) (quotation omitted).

17
18 In his amended complaint, Camacho declined to quantify the relief sought, stating that he left
19 the proper amount to the discretion of the Court. (ECF No. 4-1 at 5.) He later pleaded the amount
20 sought (\$100,000 per Defendant) in his response to the motions to dismiss. (ECF No. 44.)
21 Additionally, during the status conference held on September 27, 2018, Camacho confirmed that he is
22 only seeking damages. (ECF No. 43, Minutes.) Therefore, the Commonwealth and all official capacity
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1 Defendants are dismissed from this case because they are not persons for the purposes of a § 1983
2 lawsuit seeking damages.

3 **c. Personal Capacity Defendants**

4 In contrast, CNMI officials named as individual (or personal) capacity defendants are persons
5 for the purposes of § 1983. *DeNieva*, 966 F.2d at 483 (citing *Hafer v. Melo*, 502 U.S. 21, 27 (1991));
6 *see also Aguon v. Commonwealth Ports Authority*, 316 F.3d 899, 904 n.2 (9th Cir. 2003) (Under §
7 1983, “all officials of the Commonwealth[] may be sued in their official capacities for injunctive relief,
8 and in their individual capacities for damages”) (citations omitted). “To state a claim under § 1983
9 against state officials in their individual capacities, a plaintiff must plead that the officials, ‘acting
10 under color of state law, caused the deprivation of a federal right.’” *OSU Student Alliance v. Ray*, 699
11 F.3d 1053, 1061 (9th Cir. 2012) (quoting *Suever v. Connell*, 579 F.3d 1047, 1060 (9th Cir. 2009)).

12
13 The United States Supreme Court has interpreted the Eighth Amendment to mean the
14 government has an obligation to provide medical care to the individuals it is incarcerating. *Estelle v.*
15 *Gamble*, 429 U.S. 97, 103 (1976). “Deliberate indifference to the serious medical needs of prisoners”
16 violates the Eighth Amendment. *Id.* at 104. Not every prisoner claim of inadequate medical treatment
17 will reach the level of a constitutional violation. *Id.* at 105–6. First, the plaintiff must have a serious
18 medical need, such that “failure to treat the injury or condition ‘could result in further significant
19 injury’ or cause ‘the unnecessary and wanton infliction of pain.’” *Colwell v. Bannister*, 763 F.3d 1060,
20 1066 (9th Cir. 2014) (quoting *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)). Second, the prison
21 official must be deliberately indifferent to that serious medical need, meaning that official “knows of
22 and disregards an excessive risk to inmate health and safety.” *Id.* (quoting *Toguchi v. Chung*, 391 F.3d
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1 1051, 1057 (9th Cir. 2004)).

2 Here Defendants concede, and the Court agrees, that an imminent heart attack and bypass
3 surgery are serious medical needs. (Personal Capacity Defs.’ Memo. at 3, ECF No. 42.) Defendants
4 assert that they were not deliberately indifferent to Camacho’s medical needs because (1) Camacho
5 failed to allege that any of the named Defendants other than Rios and Rebuenog were aware of his
6 symptoms from August 30 to September 1, 2017, and (2) Rios and Rebuenog did not know of and
7 disregard an excessive risk to Camacho’s health. (*Id.* at 4–5.) Deliberate indifference is a high legal
8 standard; it requires more than medical malpractice or gross negligence. *Wood v. Housewright*, 900
9 F.2d 1332, 1334 (9th Cir. 1990). Camacho alleges that Rios, Rebuenog, and Benjamin Lizama denied
10 his requests to be brought to the hospital on August 31 and September 1, 2017, and that Frederick
11 Billy ignored his complaints about the officers that refused to bring him to the hospital. (ECF No 4-1
12 at 2–3; ECF No. 44 at 1.) Their orders delaying and denying that Camacho be taken to the hospital
13 were, in hindsight, the wrong decision. However, Camacho has not alleged sufficient facts to show
14 that they knew he had a serious medical need and disregarded it. The facts support the opposite
15 conclusion. If neither of the EMTs who saw Camacho on August 31 and September 1 – before he was
16 taken to the hospital on the evening of September 1, 2017 – or the doctor who diagnosed him with
17 anxiety on August 30, recognized that he was suffering from or had an imminent risk of a heart attack,
18 then Defendants could not have been aware of the risk.

19
20 After Camacho’s heart attack was diagnosed, it is plausible that all Defendants were aware that
21 he had a serious medical need. “Deliberate indifference ‘may appear when prison officials deny, delay
22 or intentionally interfere with medical treatment.’” *Colwell*, 763 F.3d at 1066 (quoting *Hutchinson v.*
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1 *United States*, 838 F.2d 390, 394 (9th Cir. 1988)). Camacho alleges that Director of Civil Division
2 Georgia Cabrera interfered with his medical file and off-island medical treatment, and that Medical
3 Officer Nina Aldan refused to make follow-up appointments after he was discharged from the hospital.
4 (ECF No. 1 at 4; ECF No. 4-1 at 1–4; ECF No. 44 at 1–2.) He alleges that Lieutenant Manuel Quitano,
5 Captain Pius Yaroitemal, Captain Jose Pangelinan, and Commissioner Vincent Attao ignored his
6 complaints and grievances that he was denied medical assistance. (ECF No. 4-1 at 1–3; ECF No. 44
7 at 1–2.)

8 The Court is troubled that DOC officials would delay or interfere with Camacho’s medical
9 treatment after he suffered a heart attack. However, a delay in treatment only constitutes an Eighth
10 Amendment violation if it causes substantial harm. *Wood*, 900 F.2d at 1335 (citation omitted). Here,
11 Camacho was seen by a specialist in Guam, chose his preferred treatment (bypass surgery), was
12 hospitalized while awaiting his surgery, and transported to Los Angeles for the surgery within eleven
13 weeks after his heart attack was diagnosed. The one time he complained of chest pains after he was
14 diagnosed, he was taken to the hospital in Guam and admitted that same day. (ECF No. 1 at 4.)
15 Camacho has not pleaded any facts that show he suffered substantial harm *due to* any delay or
16 interference with his treatment. The harms he alleges resulted from his heart condition and the surgery
17 he opted for, not the actions of Defendants after September 1, 2017. In order to state a claim of
18 deliberate indifference by personal capacity Defendants, he would have to allege that (1) they were
19 aware of his serious medical need; (2) they disregarded an excessive risk to his health by denying,
20 delaying, or interfering with his medical care; and (3) he suffered substantial harm because of that
21 denial, delay, or interference.
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1 Finally, Camacho's amended complaint also includes a claim against the unnamed doctor who
2 erroneously diagnosed him with anxiety when he was taken to the hospital on August 30, 2017. (ECF
3 No. 4-1 at 4.) However, "[m]edical malpractice does not become a constitutional violation merely
4 because the victim is a prisoner." *Estelle*, 429 U.S. at 106. Therefore, Camacho has not stated a
5 plausible § 1983 claim against the unnamed doctor.⁷

6 V. CONCLUSION

7 For reasons set forth above, the Court GRANTS IN FULL the Commonwealth and official
8 capacity Defendants' motions to correct misjoinder of DOC and to dismiss the action against them
9 (ECF No. 36). The Court also GRANTS the personal capacity Defendants' motion to dismiss (ECF
10 No. 37), but Plaintiff is GRANTED LIMITED LEAVE TO AMEND some of those claims. In
11 particular, the Court orders as follows:
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- 13 1. The Department of Corrections is DISMISSED from the case because it lacks the capacity
14 to sue or be sued, and the Commonwealth is substituted in its stead.
- 15 2. Camacho's complaint against the Commonwealth and all official capacity Defendants is
16 DISMISSED because they cannot be sued for damages under § 1983, and he did not request
17 any prospective relief.
- 18 3. Camacho's complaint against all personal capacity Defendants is DISMISSED WITH
19 PREJUDICE as to the events that occurred prior to and on September 1, 2017, because he
20 failed to state a plausible claim that they were deliberately indifferent to his serious medical
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23 ⁷ Medical malpractice is its own cause of action that may be actionable in state court.

1 needs *before* the doctor diagnosed his heart attack on September 1, 2017. Because
2 Camacho's allegations against Defendants Lorraine Rios, the late Frances Rebuenog,
3 Benjamin Lizama, and Frederick Billy relate to events occurring before his diagnosis, they
4 are DISMISSED from the case.

- 5 4. Defendants' motion to dismiss Camacho's complaint against all remaining personal
6 capacity Defendants as it pertains to the events that occurred *after* the doctor diagnosed
7 Camacho's heart attack is GRANTED WITHOUT PREJUDICE.
- 8 5. Plaintiff is GRANTED LEAVE TO AMEND his complaint, limited to adding more facts
9 to support his claims against the remaining personal capacity Defendants for deliberate
10 indifference to his serious medical condition after September 1, 2017. He may file a Second
11 Amended Complaint **no later than March 1, 2019**. A Second Amended Complaint placed
12 in outgoing prison mail by March 1, 2019 will be considered timely filed even if the Clerk
13 receives it after that date. **If Plaintiff fails to file an amended complaint by this deadline,**
14 **the case will be dismissed with prejudice.**

15
16 IT IS SO ORDERED on this 31st day of January, 2019.

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19 _____
20 RAMONA V. MANGLONA
21 Chief Judge
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