

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Ward v. Lovell

Ward · No. 3:24-cv-1400-RSH-MSB · Decided September 18, 2025

OPINION

Ward v. Lovell

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 WAYNE WARD, Case No.: 3:24-cv-1400-RSH-MSB

CDCR #BK-3300,

12 ORDER (1) CONSTRUING ECF NO. Plaintiff,

13 8 AS A FIRST AMENDED

vs. COMPLAINT AND

14

15 (2) DISMISSING FIRST AMENDED

J. LOVELL, E. GUEVARA, C. COMPLAINT WITHOUT

16

MARTINEZ, R. ALLEN, J. MAGNAR, PREJUDICE FOR FAILURE TO

17 Defendants. COMPLY WITH FED. R. CIV. P. 8

AND FAILURE TO STATE A

18 CLAIM PURSUANT TO 28 U.S.C. 19 §§ 1915(e)(2)(B)(ii) & 1915A(b)(1) 20

I. INTRODUCTION

21 Plaintiff Wayne Ward (“Plaintiff” or “Ward”) is a state inmate proceeding pro se 22 with a civil
rights action pursuant to 42 U.S.C. § 1983. In his original complaint, Ward 23 alleged Defendants
violated his Eighth Amendment rights by using excessive force against 24 him and failing to
provide him with medical care after he was injured. See ECF No. 1. On 25 May 7, 2025, the Court
granted Plaintiff’s request to proceed in forma pauperis and 26 dismissed the original complaint
without prejudice for failure to state a claim. See ECF No. 27

7. The Court granted Ward leave to file an amended complaint by June 21, 2025. Id. at 7.

28 1 On June 20, 2025, Ward filed a 2-page “letter” (ECF No. 8), which this Court now 2 liberally
CONSTRUES as a First Amended Complaint (“FAC”). See *Hebbe v. Pliler*, 627 3 F.3d 338, 342
(9th Cir. 2010) (stating courts must “construe pro se filings liberally”); see 4 also *Teal v. Vargo*, 9
F. App’x 718, 719 (9th Cir. 2001) (concluding district court 5 reasonably construed document

entitled “narrative summary” as an amended complaint 6 when it was the only document filed by pro se plaintiff after leave to amend was granted). 7 For the reasons discussed below, the Court dismisses the FAC without prejudice and 8 with leave to amend.

9 II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b)

10 A. Legal Standard 11 Plaintiff is proceeding in forma pauperis and as such, the Court must screen the FAC 12 and dismiss it to the extent that it is frivolous, malicious, fails to state a claim, or seeks 13 damages from defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). 14 “The standard for determining whether Plaintiff has failed to state a claim upon which relief 15 can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 16 12(b)(6) standard for failure to state a claim.” *Watson v. Carter*, 668 F.3d 1108, 1112 (9th

17 Cir. 2012). Rule 12(b)(6) requires that a complaint “contain sufficient factual matter . . . to 18 state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 19 (2009) (internal quotation marks omitted). While detailed factual allegations are not 20 required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere 21 conclusory statements, do not suffice” to state a claim. *Id.* The “mere possibility of 22 misconduct” or “unadorned, the defendant-unlawfully-harmed-me accusation[s]” fall short 23 of meeting this plausibility standard. *Id.* 24 B. Plaintiff’s Allegations 25 The factual allegations in the FAC are sparse. Ward states that on January 15, 2023, 26 Officer Lovell “use[d] excessive force on [him].” ECF No. 8 at 1. He alleges he was 27 “complying with [Lovell] and Officer Guevara when [he] was slapped into a bench in the 28 1 dayroom.” *Id.* When Ward fell onto the bench, he hit his head and shoulder. He still suffers 2 from pain as a result. *Id.* Ward further states that “prison employees C. Martinez, R. Allen 3 and J. Magnar refused me medical care by saying I would receive care later.” *Id.* 4 C. Discussion 5 1. Rule 8 6 Federal Rule of Civil Procedure 8(a) requires a complaint provide “a short and plain 7 statement of the claim showing that the pleader is entitled to relief,” sufficient to “give the 8 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell 9 Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). “Factual allegations 10 must be enough to raise a right to relief above the speculative level.” *Id.* A pleading that 11 merely alleges “naked assertion[s] devoid of further factual enhancement” is insufficient 12 to comply with Rule 8. *Iqbal*, 556 U.S. at 678 (citation and internal quotation marks 13 omitted). 14 Here, the FAC contains little more than conclusory statements, with very few 15 specific facts. While not entirely clear, the FAC appears to be an attempt by Ward to 16 address a deficiency discussed in this Court’s May 7, 2025 screening order, which noted 17 that Ward had failed to tie any specific conduct to any named defendant. ECF No. 7 at 4– 18 5. In his FAC, Ward makes clear he is suing defendants Lovell and Guevara for excessive 19 force and defendants Martinez, Allen and Magar for failure to provide him with medical 20 care. ECF No. 8 at 1. But beyond that, the FAC is nearly devoid of specific facts regarding 21 the details of the alleged incident(s) and/or Ward’s injuries. While Ward’s original 22 complaint contained some of these

specifics, an amended complaint replaces any prior 23 complaint, which is “treated thereafter as non-existent.” See *Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (internal citations omitted). Thus, because 25 the FAC is not complete in itself, and contains only conclusory assertions “devoid of 26 27 28 1 further factual enhancement,” it is insufficient to comply with Rule 8. *Iqbal*, 556 U.S. at 2 678 (citation and internal quotation marks omitted); see also *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982) (stating that “liberal interpretation of a civil 4 rights complaint may not supply essential elements of the claim that were not initially 5 pled”). 6 Therefore, the Court DISMISSES the First Amended Complaint without prejudice 7 and with leave to amend, for failure to comply with Rule 8 and failure to state a claim. See 8 Fed. R. Civ. P. 8(a); see also 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A(b)(1). 9 2. Legal Standards 10 Should Plaintiff seek to amend, the Court again provides the following legal 11 standards for Eighth Amendment excessive force and medical care claims raised pursuant 12 to 42 U.S.C. § 1983: 13 a. 42 U.S.C. § 1983 14 Generally, to state a claim under § 1983, a plaintiff must plausibly allege “both (1) 15 deprivation of a right secured by the Constitution and laws of the United States, and (2) 16 that the deprivation was committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012). In doing so, a plaintiff must 18 allege he suffered a specific injury as a result of a defendant’s conduct and show a link 19 between the injury and that conduct. See *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976). 20 Without an affirmative link or connection between a defendant’s actions and the claimed 21 deprivation, there can be no § 1983 liability. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 22 1978) (“A person ‘subjects’ another to the deprivation of a constitutional right, within the 23 meaning of section 1983, if he does an affirmative act, participates in another’s affirmative 24 acts, or omits to perform an act which he is legally required to do that causes the deprivation 25 of which complaint is made.”). 26 b. Excessive Force 27 For § 1983 claims alleging excessive force under the Eighth Amendment, the “core 28 judicial inquiry” is “whether force was applied in a good-faith effort to maintain or restore 1 discipline, or maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 2 1, 7 (1992); *Wilkins v. Gaddy*, 559 U.S. 34, 40 (2010). To that end, federal courts look to 3 factors such as: (1) the need for application of force; (2) the relationship between the need 4 and the amount of force used; (3) the extent of the injury inflicted; (4) the threat “reasonably 5 perceived by the responsible officials”; and (5) “any efforts made to temper the severity of 6 a forceful response.” *Hudson*, 503 U.S. at 7 (quoting *Whitley v. Albers*, 475 U.S. 312, 321 7 (1986)). Where prison officials “act in response to a prison disturbance, their actions are 8 necessarily taken ‘in haste, under pressure,’ and balanced against ‘competing institutional 9 concerns for safety of prison staff or other inmates.’” *Wilson v. Seiter*, 501 U.S. 294, 302 10 (1991) (quoting *Whitley*, 475 U.S. at 320). 11 c. Inadequate Medical Care 12 To state an Eighth Amendment claim based on inadequate medical care, a prisoner 13 must plausibly allege a “serious medical need,” and that the defendant was “deliberately 14 indifferent” to that need. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing *Estelle v. Gamble*, 429 U.S.

97, 106 (1976)). The test for deliberate indifference has objective and 16 subjective components. To satisfy the objective prong, the plaintiff must show a “serious 17 medical need, by establishing that failure to treat a prisoner’s condition could result in 18 further significant injury or the ‘unnecessary and wanton infliction of pain.’” Jett, 439 F.3d 19 at 1096 (quoting Estelle, 429 U.S. at 104). To satisfy the subjective prong, the plaintiff 20 must allege the defendant’s response to the need was deliberately indifferent by showing 21 “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need and 22 (b) harm cause by the indifference.” Id. Put another way, a plaintiff must show the official 23 knew of and disregarded “excessive risk to inmate health and safety.” Toguchi v. Chung, 24 391 F.3d 1051, 1057 (9th Cir. 2004) (citation omitted). The official “must not only be 25 aware of facts from which the inference could be drawn that a substantial risk of serious 26 harm exists,” but that official “must also draw the inference.” Id. (citation and internal 27 quotation marks omitted). “Deliberate indifference is a high legal standard.” Id. at 1060. A 28 1 showing of negligence or inadvertence is insufficient to establish an Eighth Amendment 2 violation. Jett, 439 F.3d at 1096. 3 D. Leave to Amend 4 Given Plaintiff’s pro se status, the GRANTS him one final opportunity to amend, 5 as set forth below. See Rosati v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir. 2015) (“A district 6 court should not dismiss a pro se complaint without leave to amend unless ‘it is absolutely 7 clear that the deficiencies of the complaint could not be cured by amendment.’”) (quoting 8 Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)).

9 III. CONCLUSION AND ORDER

10 Accordingly, the Court: 11 1. CONSTRUES Plaintiff’s “Letter” (ECF No. 8) as a First Amended 12 Complaint. 13 2. DISMISSES the First Amended Complaint in its entirety for failure to 14 comply with Federal Rule of Civil Procedure 8 and failure to state a claim pursuant to 28 15 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A(b)(1). 16 3. GRANTS Plaintiff sixty (60) days leave from the date of this Order in which 17 to file a Second Amended Complaint which cures the pleading deficiencies discussed 18 above. Plaintiff’s Second Amended Complaint must be complete by itself. See S.D. 19 Cal. CivLR 15.1; Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 20 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes the original.”); Lacey v. 21 Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012) (noting claims dismissed with leave to 22 amend which are not re-alleged in an amended pleading may be considered “waived if not 23 replied.”). 24 If Plaintiff fails to timely file a Second Amended Complaint, the Court will enter a 25 final Order dismissing this civil action based both on failure to state a claim upon which 26 relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1), and 27 failure to prosecute in compliance with a court order requiring amendment. See Lira v. 28 Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of | opportunity to fix his complaint, a district court may convert the dismissal of the 2 complaint into dismissal of the entire action.”). 3 3. DIRECTS the Clerk of Court to include with this Order a blank 42 U.S.C. 4 || § 1983 Civil Rights Complaint form for Plaintiff’s convenience. 5 IT IS SO ORDERED. ° febut ¢

Hows 7 Dated: September 18, 2025 8 Hon. Robert S. Huie 9 United States District Judge 10 11 12
13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 7 oe □□