

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

Deshawn Leavell Green v. State of California

Green v. State of California · No. 2:23-cv-2243 KJM SCR P · Decided March 28, 2025

OPINION

(PC) Green v. State of CA

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 DESHAWN LEAVELL GREEN, No. 2:23-cv-2243 KJM SCR P

12 Plaintiff, 13 v. ORDER

14 STATE OF CALIFORNIA,

15 Defendants. 16

17 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights 18 action
under 42 U.S.C. § 1983. Before the court is plaintiff’s first amended complaint (“FAC”) 19 for
screening. (ECF No. 17.) For the reasons set forth below, the court finds plaintiff states no 20
claims for relief cognizable under §1983 and dismisses the FAC with leave to amend.

21 SCREENING

22 I. Legal Standards 23 The court is required to screen complaints brought by prisoners seeking
relief against “a 24 governmental entity or officer or employee of a governmental entity.” 28
U.S.C. § 1915A(a). In 25 performing this screening function, the court must dismiss any claim
that “(1) is frivolous, 26 malicious, or fails to state a claim upon which relief may be granted; or
(2) seeks monetary relief 27 from a defendant who is immune from such relief.” Id. § 1915A(b). A
claim is legally frivolous 28 when it lacks an arguable basis either in law or in fact. *Neitzke v.*
Williams, 490 U.S. 319, 325 1 (1989). The court may dismiss a claim as frivolous if it is based on
an indisputably meritless 2 legal theory or factual contentions that are baseless. *Neitzke*, 490 U.S.
at 327. The critical 3 inquiry is whether a constitutional claim, however inartfully pleaded, has an
arguable legal and 4 factual basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989). 5 In
order to avoid dismissal for failure to state a claim a complaint must contain more than 6 “naked
assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause 7 of
action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007). In other words, 8
“[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 9
statements do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim upon which the

10 court can grant relief has facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial 11 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable 12 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. When 13 considering whether a complaint states a claim, the court must accept the allegations as true, 14 *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007), and construe the complaint in the light most 15 favorable to the plaintiff, *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). 16 A plaintiff may bring an action under 42 U.S.C. § 1983 to redress violations of “rights, 17 privileges, or immunities secured by the Constitution and [federal] laws” by a person or entity, 18 including a municipality, acting under the color of state law. 42 U.S.C. § 1983. To state a claim 19 under 42 U.S.C. § 1983, a plaintiff must show that (1) a defendant acting under color of state law 20 (2) deprived plaintiff of rights secured by the Constitution or federal statutes. *Benavidez v. 21 County of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021). 22 II. Factual Allegations in the First Amended Complaint 23 Plaintiff is a state prisoner at the California Medical Facility (“CMF”). Plaintiff’s FAC 24 names High Desert State Prison as the sole defendant. (ECF No. 17.) Plaintiff alleges he is 25 classified as “high medical need” and was supposed to be moved to the Stockton Medical Facility 26 due to being in a wheelchair and having an “elevation restriction” order from an outside doctor. 27 (Id. at 3.) Instead, in April 2023, plaintiff was sent to High Desert State Prison (“HDSP”). 28 /// 1 Plaintiff moved to CMF in August 2023 after the outside hospital submitted a medical chrono on 2 his behalf. (Id. at 3-4.) 3 Plaintiff alleges two claims against HDSP, both identified as “medical care” issues. The 4 first claim is for the initial placement at HDSP against the outside doctor’s medical endorsement. 5 (ECF No. 17 at 3.) The second claim against HDSP is for keeping him at the prison for four 6 months. (Id. at 3-4.) Plaintiff does not identify the constitutional or other federal civil right that 7 was violated. Plaintiff alleges pain and suffering from not being able to breathe at HDSP due to 8 the high elevation and seeks an unspecified amount of damages. (Id. at 6.)

9 DISCUSSION

10 Upon screening, the undersigned determined that plaintiff’s original complaint failed to 11 state any claims for relief under § 1983 and granted plaintiff leave to amend. (ECF No. 14.) As 12 relevant here, the screening order explained that plaintiff could not sue the sole named defendant, 13 the State of California, under § 1983, and that plaintiff failed to plead the elements of an Eighth 14 Amendment deliberate indifference to serious medical need claim. (Id. at 3-5.) Plaintiff has not 15 fixed these issues in his FAC but the court will grant leave to file a second amended complaint 16 consistent with the instructions below. 17 I. High Desert State Prison is not an appropriate defendant. 18 The court advises plaintiff that like the State of California, HDSP is a state defendant that 19 cannot be sued under § 1983. See *Allison v. Cal. Adult Auth.*, 419 F.2d 822, 822-23 (9th Cir. 20 1969) (holding that a state prison is not a person under § 1983). Section 1983 requires plaintiff to 21 identify a “person” and explain what that person or persons have done to violate his constitutional 22 rights. If plaintiff chooses to file a second amended complaint, he

must identify as a defendant or 23 defendants a person or persons (such as prison officials or staff members) that participated in the 24 violation of his rights. 25 II. Plaintiff failed to state a cognizable Eighth Amendment deliberate 26 indifference to medical needs claim. 27 In the last screening order, the court provided plaintiff with the legal standards for 28 pleading an Eighth Amendment deliberate indifference to serious medical needs claim. (ECF No. 1 14 at 4-5.) Although plaintiff's FAC identified both of his claims as relating to "medical care," 2 he still did not plead the required elements. Specifically, plaintiff did not explain how any 3 persons acted with deliberate indifference. In a second amended complaint, plaintiff must 4 identify a person or persons and explain exactly what they did or did not do. Plaintiff should use 5 simple language to tell the court why those facts show that the person or persons were 6 deliberately indifferent. 7 Plaintiff should also review the following legal standards before amending. The test for 8 deliberate indifference to serious medical needs consists of two parts. Jett, 439 F.3d at 1096, 9 citing *McGuckin v. Smith*, 974 F.2d 1050 (9th Cir. 1991), overruled on other grounds by *WMX 10 Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the plaintiff must show a 11 "serious medical need" by demonstrating that "failure to treat a prisoner's condition could result 12 in further significant injury or the 'unnecessary and wanton infliction of pain.'" (Id., citing 13 *Estelle*, 429 U.S. at 104.) "Examples of serious medical needs include '[t]he existence of an 14 injury that a reasonable doctor or patient would find important and worthy of comment or 15 treatment; the presence of a medical condition that significantly affects an individual's daily 16 activities; or the existence of chronic and substantial pain.'" Lopez, 203 F. 3d at 1131-1132, 17 citing *McGuckin*, 974 F.2d at 1059-60. 18 Second, the plaintiff must show the defendant's response to the need was deliberately 19 indifferent. Jett, 439 F.3d at 1096. This second part is satisfied by showing (a) a purposeful act 20 or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the 21 indifference. (Id.) Under this standard, the prison official must not only "be aware of facts from 22 which the inference could be drawn that a substantial risk of serious harm exists," but that person 23 "must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). This "subjective 24 approach" focuses only "on what a defendant's mental attitude actually was." (Id. at 839.) A 25 showing of merely negligent medical care is not enough to establish a constitutional violation. 26 *Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998), citing *Estelle*, 429 U.S. at 105-106. 27 "[T]o show deliberate indifference, the plaintiff must show that the course of treatment"— 28 or other action—"the doctors chose was medically unacceptable under the circumstances and that 1 the defendants chose this course in conscious disregard of an excessive risk to the plaintiff's 2 health." *Hamby v. Hammond*, 821 F.3d 1085, 1092 (9th Cir. 2016) (citation and internal 3 quotation marks omitted). A difference of opinion about the proper course of treatment is not 4 deliberate indifference, nor does a dispute between a prisoner and prison officials over the 5 necessity for or extent of medical treatment amount to a constitutional violation. See, e.g., 6 *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004); *Sanchez v. Vild*, 891 F.2d 240, 242 (9th

7 Cir. 1989). Moreover, as for any § 1983 claim, there must be an actual causal link between the 8 actions of the named defendants and the alleged constitutional deprivation. See *Monell v. Dep't of Soc. Services*, 436 U.S. 658, 691–92 (1978); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 10 1980). 11 III. Legal Standards Governing Amended Complaints 12 Having conducted the screening required by 28 U.S.C. § 1915A, the court finds that the 13 FAC fails to state a claim upon which relief can be granted. Plaintiff has named one defendant, 14 High Desert State Prison, that cannot be sued under § 1983 and did not plead cognizable Eighth 15 Amendment deliberate indifference to serious medical needs claims. Because of these defects, 16 the court will not order the FAC to be served on defendants. 17 Plaintiff may try to fix these problems by filing a second amended complaint. If plaintiff 18 chooses to file an amended complaint, he must demonstrate how the conditions about which he 19 complains resulted in a deprivation of his constitutional rights. *Rizzo v. Goode*, 423 U.S. 362, 20 370-71 (1976). The complaint must also allege in specific terms how each named defendant is 21 involved. *Arnold v. Int'l Bus. Machs. Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981). There can be 22 no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a 23 defendant's actions and the claimed deprivation. *Id.*; *Johnson v. Duffy*, 588 F.2d 740, 743 (9th 24 Cir. 1978). Furthermore, “[v]ague and conclusory allegations of official participation in civil 25 rights violations are not sufficient.” *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982) 26 (citations omitted). 27 Plaintiff is also informed that the court cannot refer to a prior pleading to make his 28 amended complaint complete. Local Rule 220 requires that an amended complaint be complete 1 in itself without reference to any prior pleading. This is because, as a general rule, an amended 2 complaint supersedes any prior complaints. *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) 3 (citations omitted). Once plaintiff files an amended complaint, any previous complaint no longer 4 serves any function in the case. Therefore, in an amended complaint, as in an original complaint, 5 each claim and the involvement of each defendant must be sufficiently alleged.

6 PLAINTIFF'S REQUESTS FOR CLARIFICATION

7 Plaintiff has filed two requests for clarification regarding his in forma pauperis status. 8 (ECF Nos. 18 and 19.) Plaintiff states that because he is proceeding in forma pauperis, his filing 9 fees were waived and should not be deducted from his trust account. He also requests copies of 10 the court's prior orders on his in forma pauperis application for his records. (*Id.*) 11 As explained in the court's order granting plaintiff's in forma pauperis (“IFP”) application 12 (ECF No. 14 at 1-2), the IFP statute requires prisoners proceeding in forma pauperis to pay the 13 \$350.00 filing fee in monthly installments that are taken from the prisoner's trust account, rather 14 than in one lump sum. (28 U.S.C. §§ 1914(a).) By that order, the court directed the prison to 15 remove an initial partial filing fee from plaintiff's trust account. (*Id.* (citing 28 U.S.C. § 16 1915(b)(1)).) The court then issued a separate order directing CDCR to deduct monthly payments 17 of twenty percent of the prior month's income to be taken from plaintiff's trust account. (ECF 18 No. 15.) These payments will be taken until the \$350 filing fee is paid in full. (*Id.* at 1-2 (citing

19 28 U.S.C. § 1915(b)(2)).) The Clerk of the Court shall provide copies of these orders to plaintiff.

20 CONCLUSION

21 In accordance with the above, IT IS HEREBY ORDERED that: 22 1. Plaintiff's first amended complaint (ECF No. 17) fails to state a claim upon which 23 relief can be granted, see 28 U.S.C. § 1915A, and will not be served. 24 2. Within sixty days from the date of service of this order, plaintiff may file an amended 25 complaint that complies with the requirements of the Federal Rules of Civil Procedure and the 26 court's Local Rules. The amended complaint must bear the docket number assigned this case and 27 must be labeled "Second Amended Complaint." Failure to file an amended complaint in 28 accordance with this order may result in a recommendation that this action be dismissed. 1 3. The Clerk of the Court is directed to send to plaintiff: 2 a. A copy of the prisoner complaint form used in this district; and 3 b. Copies of the court's prior orders, ECF Nos. 14 and 15. 4 | DATED: March 27, 2025. 5 6

SEAN C. RIORDAN

9 UNITED STATES MAGISTRATE JUDGE

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