

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Kakowski v. Macomber

Kakowski · No. 3:25-cv-0282-RBM-VET · Decided November 12, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Brian Kakowski’s Second Amended Complaint without prejudice for failure to state claims under 42 U.S.C. § 1983. The court rejected the alleged Eighth Amendment, due process, and First Amendment retaliation claims as insufficiently pleaded, but granted one final opportunity to amend. Plaintiff was ordered to file a complete Third Amended Complaint by December 30, 2025.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Ruth Bermudez Montenegro
JURISDICTION	United States District Court, Southern District of California
DECIDED	November 12, 2025
DOCKET	3:25-cv-0282-RBM-VET
DISPOSITION	dismissed
PROCEDURAL POSTURE	Screening of a pro se state prisoner’s Second Amended Complaint under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).
STANDARD OF REVIEW	The Court applied the Rule 12(b)(6) plausibility standard during sua sponte prisoner screening under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), accepting factual allegations as true but requiring sufficient factual matter to state a plausible claim for relief.
PRECEDENTIAL VALUE	Nonprecedential district-court order; precedential status unknown in the source metadata.

TOPICS

- section 1983
- prisoners rights
- civil rights
- due process
- first amendment

PRACTICE AREAS

- civil rights
- constitutional law
- prisoner litigation
- federal civil procedure

QUESTIONS PRESENTED

1. Whether the Second Amended Complaint plausibly alleged an Eighth Amendment claim based on unsanitary kitchen conditions and the defendants' alleged failure to train and supervise.
2. Whether the complaint plausibly alleged supervisory liability under 42 U.S.C. § 1983 against the CDCR Secretary and prison warden.
3. Whether removal from the CGA group plausibly implicated a protected liberty or property interest under the Fourteenth Amendment's Due Process Clause.
4. Whether the complaint plausibly alleged that removal from the CGA group was retaliatory conduct in violation of the First Amendment.

HOLDINGS

1. The Second Amended Complaint did not plausibly allege that the defendants subjected Plaintiff to conditions posing a substantial risk of serious harm or acted with deliberate indifference to that risk. Allegations that kitchen practices caused skin irritation were insufficient to state an Eighth Amendment claim.
2. The complaint failed to state a supervisory-liability claim against Secretary Macomber and Warden Hill because it did not allege an underlying constitutional violation or a sufficient connection between either supervisor's conduct and the alleged violation.
3. The complaint did not plausibly allege a due process violation arising from Plaintiff's removal from the CGA group or the resulting loss of custody credits because it did not identify a protected liberty or property interest, an atypical and significant hardship, or a deprivation that would inevitably shorten the sentence.
4. The complaint did not plausibly allege a First Amendment retaliation claim because it lacked factual allegations showing that Defendant Hernandez acted with a retaliatory motive or that Plaintiff's grievance was a substantial or motivating factor in the removal decision.

KEY QUOTATIONS

"First, the deprivation alleged must be, objectively, 'sufficiently serious.'" (at 6)

"Supervisory liability is not an independent cause of action under § 1983, and Plaintiff must allege both an underlying constitutional violation and a connection between the supervisor's actions and the violation." (at 7)

"Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" (at 9)

"Prisoners have a First Amendment right to file grievances against prison officials and to be free from retaliation for doing so." (at 10)

FACTUAL BACKGROUND

Brian Kakowski, a California state prisoner, was assigned to work in the Richard J. Donovan Correctional Facility kitchen despite being told he was not medically cleared to handle food. He alleged that kitchen supervisors required him to handle food and wash kitchen items with floor detergent that irritated his skin, and that supervisory officials failed to ensure compliance with food-safety standards. He further alleged that a lieutenant removed him from a CGA group after he filed a grievance, thereby preventing him from earning credits toward an earlier parole hearing.

PROCEDURAL HISTORY

Plaintiff filed this § 1983 action on February 5, 2025, alleging unconstitutional conditions in the prison kitchen, supervisory liability, retaliation, and denial of due process. The Court previously dismissed the original Complaint for failure to plausibly allege deliberate indifference and granted leave to amend. After Plaintiff filed a First Amended Complaint and then a substantially identical Second Amended Complaint, the Court dismissed all claims without prejudice and granted one final opportunity to amend by December 30, 2025.

DISPOSITION

dismissed

CASES CITED

- *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
- *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
- *Watson v. Carter*, 668 F.3d 1108, 1112 (9th Cir.)
- *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)
- *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir.)
- *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir.)
- *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000)
- *Anderson v. County of Kern*, 45 F.3d 1310, 1314-15 (9th Cir.)
- *Farmer v. Brennan*, 511 U.S. 825, 834-37, 843 (1994)
- *Wilson v. Seiter*, 501 U.S. 294, 298, 302-03 (1991)
- *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011)
- *Hansen v. Black*, 855 F.2d 642, 646 (9th Cir.)
- *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir.)
- *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005)
- *Swarthout v. Cooke*, 562 U.S. 216, 220 (2011)
- *Sandin v. Connor*, 515 U.S. 472, 481-87 (1995)
- *Watson v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2021)
- *Wood v. Yordy*, 753 F.3d 899, 905 (9th Cir. 2014)

- Rosati v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir.)
- Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir.)
- Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir.)
- Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012)
- Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir.)

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