

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

Kern v. Edar

No. 2:24-cv-2104 DC CSK P (E.D. Cal. Apr. 9, 2025) · No. 2:24-cv-2104 DC CSK P · Decided April 10, 2025

OPINION

(PC) Kern v. Edar

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 JAMES CURTIS KERN, No. 2:24-cv-2104 DC CSK P

12 Plaintiff, 13 v. ORDER 14 DR. CORWIN EDAR, et al., 15 Defendants. 16 17 Plaintiff is a
state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. 18 §1983 and
requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This 19 proceeding
was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). 20 Plaintiff
submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). 21 Accordingly,
the request to proceed in forma pauperis is granted. 22 Plaintiff is required to pay the statutory
filing fee of \$350.00 for this action. 28 U.S.C. 23 §§ 1914(a), 1915(b)(1). By this order, plaintiff is
assessed an initial partial filing fee in 24 accordance with the provisions of 28 U.S.C. § 1915(b)
(1). By separate order, the Court will 25 direct the appropriate agency to collect the initial partial
filing fee from plaintiff's trust account 26 and forward it to the Clerk of the Court. Thereafter,
plaintiff is obligated to make monthly 27 payments of twenty percent of the preceding month's
income credited to plaintiff's trust account. 28 These payments will be forwarded by the
appropriate agency to the Clerk of the Court each time 1 the amount in plaintiff's account exceeds
\$10.00, until the filing fee is paid in full. 28 U.S.C. 2 § 1915(b)(2). 3 As set forth below, plaintiff's
complaint is dismissed with leave to amend.

4 I. SCREENING STANDARDS

5 The court is required to screen complaints brought by prisoners seeking relief against a 6
governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The 7
court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally 8
“frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek 9
monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).
10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. 11 *Neitzke*
v. Williams, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th

12 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
13 indisputably meritless legal theory or where the factual contentions are clearly baseless.
Neitzke, 14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however
inartfully 15 pleaded, has an arguable legal and factual basis. See *Jackson v. Arizona*, 885 F.2d
639, 640 (9th

16 Cir. 1989), superseded by statute as stated in *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir.
17 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably 18
meritless legal theories or whose factual contentions are clearly baseless.”); *Franklin*, 745 F.2d at
19 1227.

20 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain
21 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the 22
defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atlantic*
23 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47
(1957)). 24 In order to survive dismissal for failure to state a claim, a complaint must contain
more than “a 25 formulaic recitation of the elements of a cause of action;” it must contain factual
allegations 26 sufficient “to raise a right to relief above the speculative level.” *Bell Atlantic*, 550
U.S. at 555. 27 However, “[s]pecific facts are not necessary; the statement [of facts] need only
‘give the 28 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’”
Erickson v. 1 Pardus, 551 U.S. 89, 93 (2007) (quoting *Bell Atlantic*, 550 U.S. at 555, citations and
internal 2 quotations marks omitted). In reviewing a complaint under this standard, the court must
accept as 3 true the allegations of the complaint in question, *Erickson*, 551 U.S. at 93, and
construe the 4 pleading in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S.
232, 236 5 (1974), overruled on other grounds, *Davis v. Scherer*, 468 U.S. 183 (1984).

6 II. PLAINTIFF’S COMPLAINT

7 Plaintiff alleges that on December 13, 2023, plaintiff saw defendant Dr. Corwin Edar and 8
explained that plaintiff’s primary care physician had left plaintiff on a list for several months to 9
be seen by a nerve doctor but then later claimed they had no contract with a nerve doctor. (ECF
10 No. 1 at 4.) Dr. Edar claimed he was plaintiff’s primary care physician’s boss. Plaintiff
11 explained he was very concerned about his medical care, and wanted a different doctor; Dr.
Edar 12 said he could not promise he could take her off plaintiff’s chart or ensure follow-up visits.
13 Plaintiff explained he has severe pain in his left forearm and bicep, and it feels like major nerve
14 damage and limits his range of motion. (Id.) In addition, he informed Dr. Edar that although 15
RCCC medical staff has been aware of the mass on plaintiff’s left forearm since October 2022, no
16 biopsy has been performed to confirm it’s just a lipoma, as medical staff presumes. (Id.) While
17 plaintiff was explaining, Dr. Edar quietly walked behind plaintiff, put one hand on plaintiff’s
18 shoulder, and quickly and forcefully snatched plaintiff’s left arm, forcing it past the range of 19
motion limit plaintiff had identified. Plaintiff states that Dr. Edar’s actions “instantly inflicted 20
extreme pain to an already very painful condition, making things much worse.” (Id.) As a result,

21 plaintiff alleges that the mass has become very hard and presses directly on a nerve, and the left
22 bicep is under much more stress when moving, increasing his nerve damage to unbearable. 23
In his second claim, plaintiff alleges that on January 23, 2024, near the elevator, plaintiff 24
informed Dr. Fadaki that plaintiff's blood pressure pill had changed to an extremely strong green
25 pill that made plaintiff sick for four days. (Id. at 5.) Plaintiff claims that Dr. Fadaki responded,
26 "you'll either take the pill or refuse your medicine," which plaintiff alleges is medical 27
malpractice. (Id.) Plaintiff then told Dr. Fadaki that due to his left bicep and the mass on his left 28
forearm, plaintiff could only lift his arm so high and could feel severe nerve damage. (Id.) 1
Plaintiff alleges Dr. Fadaki grabbed plaintiff's arm and forcefully pulled it straight up, trying to 2
pass the range plaintiff had described. Plaintiff yelled and pulled his arm away. Plaintiff claims 3
that Dr. Fadaki told plaintiff to either let her pull plaintiff's arm all the way past the painful 4
limited range or she would document that plaintiff refused treatment. (Id.) Plaintiff refused, and 5
plaintiff claims that Dr. Fadaki, allegedly in a rage, discontinued plaintiff's appointment and sent 6
him back to his cell. (Id.) Plaintiff alleges that Dr. Fadaki did not order a biopsy of the mass on 7
plaintiff's forearm, just assuming it was a lipoma. Plaintiff claims that Dr. Fadaki stated several 8
times that a more professional opinion was needed, but failed to take the steps needed and was 9
partially responsible for plaintiff's release to state custody without a proper diagnosis or 10
treatment. (Id.) 11 Plaintiff alleges that his condition became much worse after Dr. Fadaki
"attacked" 12 plaintiff's bicep, and the nerves around the mass are much more stressed. (Id.)
Plaintiff seeks 13 unidentified injunctive relief, declaratory relief, and monetary damages. (ECF
No. 1 at 9.) 14 Plaintiff names Dr. Edar and Dr. Fadaki as defendants.

15 III. DISCUSSION

16 A. Standards Governing Medical Care 17 A claim for a violation of a pretrial detainee's right to
adequate medical care arises under 18 the Fourteenth Amendment rather than the Eighth
Amendment. *Bell v. Wolfish*, 441 U.S. 520, 19 535 n.16 (1979) (pretrial detainee challenge to
conditions of confinement is brought under Due 20 Process Clause of Fourteenth Amendment).
"Pretrial detainees have a constitutional right to 21 adequate medical care while in the custody of
the government and awaiting trial." *Est. of Nelson v. Chelan Cnty.*, 2024 WL 1705923, at *9
(E.D. Wash. Apr. 19, 2024) (citing *Russell v. Lumitap*, 23 31 F.4th 729, 738 (9th Cir. 2022)). The
claim is evaluated under an objective deliberate 24 indifference standard. *Gordon v. Cty. of
Orange*, 888 F.3d 1118, 1120, 1124-25 (9th Cir. 2018). 25 To state a Fourteenth Amendment claim
that a jail official was deliberately indifferent to a 26 pretrial detainee's safety or health, the
detainee must show: 27 (i) the defendant made an intentional decision with respect to the
conditions under which the plaintiff was confined; (ii) those 28 conditions put the plaintiff at
substantial risk of suffering serious 1 harm; (iii) the defendant did not take reasonable available
measures to abate that risk, even though a reasonable official in the 2 circumstances would have
appreciated the high degree of risk involved—making the consequences of the defendant's
conduct 3 obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's

injuries. 4

5 Id. at 1125.

6 For the third element, the defendant's conduct must be objectively unreasonable, "a test 7 that will necessarily turn[] on the facts and circumstances of each particular case." Id. (citations 8 and internal quotation marks omitted). The four-part test articulated in Gordon requires the 9 plaintiff to prove more than negligence, but less than subjective intent—something akin to 10 reckless disregard. See id. Mere negligence and a simple lack of due care do not violate the 11 Fourteenth Amendment. See *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 12 2016); *Gordon*, 888 F.3d at 1125. 13 B. Analysis

14 In 2023, plaintiff was a pretrial detainee housed in the Sacramento County Jail.¹ Here, 15 plaintiff's allegations fail to demonstrate defendants' actions were deliberately indifferent. 16 Plaintiff concedes that Dr. Fadaki and medical staff at the jail believed the mass on plaintiff's 17 forearm was a lipoma. But even if defendants misdiagnosed the mass on plaintiff's forearm such 18 misdiagnosis constitutes medical malpractice, not a Fourteenth Amendment violation.² Although 19 plaintiff characterizes the doctors' movement of plaintiff's arm as an attack, plaintiff also alleges 20 that both doctors moved plaintiff's arm after plaintiff reported problems with his range of motion 21 in his arm, supporting the inference that the doctors were evaluating plaintiff's range of motion in 22 1 Plaintiff was a state prisoner at the time he filed the instant complaint. But according to 23 plaintiff's petition for writ of habeas corpus, plaintiff was not convicted until February 6, 2024. *Kern v. Superior Court*, No. 2:24-cv-2432 DAD JDP P (E.D. Cal.). A court may take judicial 24 notice of court records. See, e.g., *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002) ("[W]e may take notice of proceedings in other courts, both within and without the federal 25 judicial system, if those proceedings have a direct relation to matters at issue") (internal quotation omitted). Thus, at the time of the instant allegations, plaintiff was a pretrial detainee. 26 2 Indeed, according to plaintiff's own civil rights complaint, even physicians at Pelican Bay State 27 Prison, where plaintiff is presently housed, believe that the mass is a lipoma, and have also not taken a biopsy of the mass. *Kern v. Dr. D. Goller*, 2:24-cv-7094 CRB (N.D. Cal. Dec. 23, 2024) 28 (ECF No. 8 at 4). 1 response to his reported symptoms.³ Further, while plaintiff objects to such range of motion 2 testing, plaintiff provides no facts showing that their efforts to test plaintiff's range of motion was 3 objectively unreasonable under the circumstances where both doctors moved plaintiff's arm after 4 he reported problems with his range of motion in his arm. In addition, the Court observes that in 5 an earlier § 1983 case, plaintiff acknowledges that he was referred to an orthopedic specialist, Dr. 6 Ho, some time prior to March 30, 2023, and saw Dr. Ho again on March 19, 2024. *Kern v. Dr. 7 Ho*, 2:24-cv-1931 TLN CSK P (E.D. Cal.) (ECF No. 1 at 4). While it is clear that plaintiff 8 believes he should have been provided a biopsy for the mass on his forearm and disagrees with 9 the range of motion testing, such disagreement fails to rise to the level of a constitutional 10 violation. Because plaintiff's injuries are unclear, the Court cannot determine whether it is 11 plausible that the doctors' actions in testing plaintiff's range of motion

caused plaintiff's injuries 12 to worsen. 13 In addition, plaintiff's allegation concerning his blood pressure medication, which 14 plaintiff characterizes as medical malpractice, is too vague and conclusory for this Court to 15 determine whether plaintiff could state a cognizable Fourteenth Amendment claim. Absent facts 16 not alleged here, the medication issue would at most rise to the level of malpractice, which fails to 17 state a cognizable Fourteenth Amendment claim. 18 Finally, plaintiff's request for unspecified injunctive relief against defendants is now moot 19 because plaintiff is no longer housed at the Sacramento County Jail, but has been transferred to 20 state custody, and plaintiff does not allege he has a reasonable expectation of returning to the 21 county jail. See *Stine v. Von Blankensee*, 2024 WL 1406428, at *1 (9th Cir. Apr. 2, 2024) 22 ("Stine's deliberate indifference claim seeking injunctive and declaratory relief has become moot 23 because Stine was transferred to another prison"); *Andrews v. Cervantes*, 493 F.3d 1047, 1053 24 n.5 (9th Cir. 2007) (prisoner's claims for injunctive relief generally become moot upon transfer) 25 (citing *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam) (holding claims for 26 3 For example, where a prisoner complained of having a painful tear in his left shoulder, the 27 doctor "performed range of motion testing." See *Payan v. Tate*, 2016 WL 310121, at *1 (E.D. Cal. Jan. 26, 2016), report and recommendation adopted, 2016 WL 1573203 (E.D. Cal. Apr. 19, 28 2016). 1 injunctive relief "relating to [a prison's] policies are moot" when the prisoner has been moved 2 and "he has demonstrated no reasonable expectation of returning to [the prison]")); *Greer v. 3 KCSO Administration*, 2021 WL 3857677, at *1 (E.D. Cal. Aug. 30, 2021), recommendation 4 adopted, 2021 WL 4502818 (Oct. 1, 2021) (finding Greer's claim for injunctive relief against 5 county jail moot where he is incarcerated in state prison and there is no reasonable expectation he 6 will return to the county jail), findings and recommendations adopted, 2021 WL 4502818 (Oct. 1, 7 2021). 8 C. Leave to Amend 9 In light of the above deficiencies, plaintiff's complaint must be dismissed. The Court 10 determines that the complaint does not contain a short and plain statement as required by Fed. R. 11 Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a complaint must 12 give fair notice and state the elements of the claim plainly and succinctly. *Jones v. Cmty. Redev. 13 Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of 14 particularity overt acts which defendants engaged in that support plaintiff's claim. *Id.* Because 15 plaintiff failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be 16 dismissed. The Court will, however, grant leave to file an amended complaint. 17 If plaintiff chooses to amend the complaint, plaintiff should provide the date of conviction 18 so the Court may determine whether the Eighth or Fourteenth Amendment applies to his claims. 19 Plaintiff must demonstrate how the conditions about which he complains resulted in a deprivation 20 of plaintiff's constitutional rights. See e.g., *West v. Atkins*, 487 U.S. 42, 48 (1988). Also, the 21 complaint must allege in specific terms how each named defendant is involved. *Rizzo v. Goode*, 22 423 U.S. 362, 371 (1976). There can be no liability under 42 U.S.C. § 1983 unless there is some 23 affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo*, 24 423 U.S. at 371; *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir.

1980). Furthermore, vague and 25 conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982). 27 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to 28 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended 1 | complaint be complete in itself without reference to any prior pleading. This requirement exists 2 || because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez 3 | v. Cnty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“an ‘amended complaint 4 || supersedes the original, the latter being treated thereafter as non-existent.’” (internal citation 5 || omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any 6 || function in the case. Therefore, in an amended complaint, as in an original complaint, each claim 7 || and the involvement of each defendant must be sufficiently alleged.

8 | V. CONCLUSION

9 In accordance with the above, IT IS HEREBY ORDERED that: 10 1. Plaintiffs request for leave to proceed in forma pauperis (ECF No. 2) is granted. 11 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff 12 || is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. 13 | § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the 14 | Director of the California Department of Corrections and Rehabilitation filed concurrently 15 || herewith. 16 3. Plaintiff’s complaint is dismissed. 17 4. Within thirty days from the date of this order, plaintiff shall complete the attached 18 || Notice of Amendment and submit the following documents to the court: 19 a. The completed Notice of Amendment; and 20 b. An original of the Amended Complaint. 21 | Plaintiff’s amended complaint shall comply with the requirements of the Civil Rights Act, the 22 || Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must 23 || also bear the docket number assigned to this case and must be labeled “Amended Complaint.” 24 || Failure to file an amended complaint in accordance with this order may result in the dismissal of 25 || this action. a Ani Spo 4 Dated: April 9, 2025 □□ □□□ Zin

UNITED STATES MAGISTRATE JUDGE

28 | } /cem2104.14n.csk 1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

JAMES CURTIS KERN, No. 2:24-cv-2104 DC CSK P

11 Plaintiff, 12

v. NOTICE OF AMENDMENT

13 DR. CORWIN EDAR, et al., 14 Defendants. 15 16 17 Plaintiff submits the following document in compliance with the court’s order 18 filed on _____ (date). 19 20 Amended Complaint 21 (Check this box if submitting an Amended Complaint) 22 DATED: _____ 23 Plaintiff 24 25 26 27 28

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