

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

Coronel v. Havard

No. 2:24-cv-3087-JDP (P), 2025 U.S. Dist. LEXIS [not available] · No. 2:24-cv-3087-JDP (P) · Decided March
6, 2025

OPINION

(PC) Coronel v. Havard

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 HANK RICHARD CORONEL, Case No. 2:24-cv-3087-JDP (P) 12 Plaintiff, 13 v. ORDER
14 HAVARD,

15 Defendant. 16

17 18 Plaintiff, a state inmate proceeding pro se, alleges that defendant, Sergeant Havard, a 19
correctional officer at California State Prison-Sacramento, used excessive force against him in 20
violation of the Eighth Amendment and violated his due process rights by filing a false 21
disciplinary charge against him. ECF No. 1. Both of his allegations appear to be unexhausted. 22
Plaintiff may, if he chooses, file an amended complaint that addresses the deficiencies noted 23
herein. I will grant plaintiff’s application to proceed in forma pauperis. ECF No. 5. 24 Screening
and Pleading Requirements 25 A federal court must screen the complaint of any claimant seeking
permission to proceed 26 in forma pauperis. See 28 U.S.C. § 1915(e). The court must identify any
cognizable claims and 27 dismiss any portion of the complaint that is frivolous or malicious, fails
to state a claim upon 28 1 which relief may be granted, or seeks monetary relief from a defendant
who is immune from such 2 relief. *Id.* 3 A complaint must contain a short and plain statement that
plaintiff is entitled to relief, 4 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to
relief that is plausible on its 5 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The
plausibility standard does not 6 require detailed allegations, but legal conclusions do not suffice.
See *Ashcroft v. Iqbal*, 556 U.S. 7 662, 678 (2009). If the allegations “do not permit the court to
infer more than the mere 8 possibility of misconduct,” the complaint states no claim. *Id.* at 679.
The complaint need not 9 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med.*
Ctr., 832 F.3d 1024, 10 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set
of “allegations that 11 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*,
469 F.3d 1257, 1264 12 n.2 (9th Cir. 2006) (en banc) (citations omitted). 13 The court must
construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404 14 U.S. 519, 520 (1972)
(per curiam). The court may dismiss a pro se litigant’s complaint “if it 15 appears beyond doubt

that the plaintiff can prove no set of facts in support of his claim which 16 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). 17 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements 18 of the claim that were not initially pled.”” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 19 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 20 Analysis 21 Plaintiff alleges that defendant called him into his office for a confidential interview. ECF

22 No. 1 at 3. Defendant turned his camera off and asked plaintiff why he had been fighting, and 23 plaintiff stated he did not know. *Id.* Plaintiff alleges that defendant “became angry and threw 24 [plaintiff] on the floor,” in violation of the Eighth Amendment. *Id.* He alleges that he suffered 25 bruising to his face, head, and body, and has suffered emotional distress due to this alleged attack. 26 *Id.* Plaintiff also alleges that after the attack, defendant filed a false disciplinary charge against 27 plaintiff, in violation of his due process rights. *Id.* at 4. Plaintiff alleges he is now paranoid that 28 additional false claims will be made against him. *Id.* 1 For the purposes of screening, plaintiff has alleged facts sufficient to state a cognizable 2 Eighth Amendment claim against defendant. See *Bearchild v. Cobban*, 947 F.3d 1130, 1140-41 3 (9th Cir. 2020). However, plaintiff’s due process allegation fails to state a claim, as the issuance 4 of a false rule violation report does not, on its own, give rise to a constitutional claim. See 5 *Muhammad v. Rubia*, No. C 08-3209-JSW, 2010 WL 1260425, at *3 (N.D. Cal., Mar. 29, 2010), 6 *aff’d*, 453 F. App’x 751 (9th Cir. 2011) (“[A] prisoner has no constitutionally guaranteed 7 immunity from being falsely or wrongly accused of conduct which may result in the deprivation 8 of a protected liberty interest. As long as a prisoner is afforded procedural due process in the 9 disciplinary hearing, allegations of a fabricated charge fail to state a claim under § 1983.”) 10 (citations omitted). 11 More importantly, though, both plaintiff’s claims appear to have a fatal flaw—the claims 12 are unexhausted. “The Prison Litigation Reform Act of 1995 . . . mandates that an inmate exhaust 13 ‘such administrative remedies as are available’ before bringing suit to challenge prison 14 conditions.” *Ross v. Blake*, 578 U.S. 632, 635 (2016) (quoting 42 U.S.C. § 1997e(a)). The 15 availability of administrative remedies must be assessed as of the time when the prisoner filed his 16 action. See *Andres v. Marshall*, 867 F.3d 1076, 1079 (9th Cir. 2017). Although dismissal of a 17 prisoner civil rights action for failure to exhaust administrative remedies must generally be 18 decided pursuant to a motion for summary judgment, see *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 19 2014), a court can also dismiss a case at screening “[i]n the rare event that a failure to exhaust is 20 clear on the face of the complaint,” *id.* at 1166. See also *Medina v. Sacramento City Sheriff’s 21 Dep’t*, No. 2:16-cv-0765 AC P, 2016 WL 6038181, at *3 (E.D. Cal. Oct. 14, 2016) (“When it is 22 clear from the face of the complaint and any attached exhibits that a plaintiff did not exhaust his 23 available administrative remedies before commencing an action, the action may be dismissed on 24 screening.”). 25 For his Eighth Amendment claim, plaintiff checked the boxed for “Yes” in response to the 26 questions, “Are there any administrative remedies . . . available at your institution?” and “Did you 27 submit a request for administrative relief on Claim I?” ECF No. 1 at

3. Plaintiff left blank the 28 1 boxes for the answer to the question of “Did you appeal your request for relief on Claim I to the 2 highest level?” See id. 3 For his due process claim, plaintiff again checked the box for “Yes” in response to the 4 question, “Are there any administrative remedies . . . available at your institution?” Id. at 4. 5 However, he left blank the boxes for the answers to the questions of “Did you submit a request 6 for administrative relief on Claim II?” and “Did you appeal your request for relief on Claim II to 7 the highest level?” See id. 8 Exhaustion must occur prior to filing suit, and a plaintiff cannot exhaust while the suit is 9 pending. *McKinney v. Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002). If a court concludes 10 that a prisoner failed to exhaust his available administrative remedies before filing a civil rights 11 action, the proper remedy is dismissal without prejudice. See *Jones*, 549 U.S. at 223-24; *Lira v. Herrera*, 427 F.3d 1164, 1175-76 (9th Cir. 2005). 13 Before recommending dismissal, I will give plaintiff leave to amend his complaint. If he 14 files an amended complaint, he should confirm whether he has exhausted his administrative 15 remedies. If he has not, he should allege why, if at all, this action should proceed. If plaintiff 16 decides to file an amended complaint, the amended complaint will supersede the current one. See 17 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means that the 18 amended complaint will need to be complete on its face without reference to the prior pleading. 19 See E.D. Cal. Local Rule 220. Once an amended complaint is filed, the current one no longer 20 serves any function. Therefore, in an amended complaint, as in the original, plaintiff will need to 21 assert each claim and allege each defendant’s involvement in sufficient detail. The amended 22 complaint should be titled “First Amended Complaint” and refer to the appropriate case number. 23 If plaintiff does not file an amended complaint, I will recommend that this action be dismissed. 24 Accordingly, it is hereby ORDERED that: 25 1. Plaintiff’s request for leave to proceed in forma pauperis, ECF No. 5, is GRANTED. 26 2. Plaintiff’s complaint, ECF No. 1, is DISMISSED with leave to amend. 27 3. Within thirty days from service of this order, plaintiff shall file either (1) an amended 28 complaint or (2) notice of voluntary dismissal of this action without prejudice. 1 4. Failure to timely file either an amended complaint or notice of voluntary dismissal may 2 | result in the imposition of sanctions, including a recommendation that this action be dismissed 3 | with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 4 5. The Clerk of Court shall send plaintiff a complaint form with this order. 5 6 IT IS SO ORDERED. Dated: _ March 5, 2025 q-

8 JEREMY D. PETERSON

9 UNITED STATES MAGISTRATE JUDGE

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