

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

Armenta v. Shah

Armenta · No. 2:22-cv-0415-TLN-JDP (P) · Decided July 30, 2025

OPINION

(PC) Armenta v. Shah

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 RICHARD ARMENTA, Case No. 2:22-cv-0415-TLN-JDP (P) 12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 SANJAY SHAH,

15 Defendant. 16

17 18 Plaintiff, a prisoner proceeding pro se, alleges that defendant Sanjay Shah performed an 19
appendectomy on him and, afterwards, violated his Eighth Amendment rights by waiting an 20
extended period (two or three weeks) to inform him that the appendix had not actually been 21
removed. Defendant has now moved for judgment on the pleadings, ECF No. 71. Defendant's 22
motion should be denied. 23 I. Legal Standards 24 The standard for adjudicating a motion for
judgment on the pleadings is identical to the 25 one used for deciding a motion to dismiss under
Rule 12(b)(6). See *Cafasso v. General Dynamics* 26 *C4 Sys., Inc.*, 637 F.3d 1047, 1055 n.4 (9th
Cir. 2011). A complaint may be dismissed under that 27 rule for "failure to state a claim upon
which relief may be granted." Fed. R. Civ. P. 12(b)(6). To 28 survive a motion to dismiss for
failure to state a claim, a plaintiff must allege "enough facts to 1 state a claim to relief that is
plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 2 570 (2007). A claim has
"facial plausibility when the plaintiff pleads factual content that allows 3 the court to draw the
reasonable inference that the defendant is liable for the misconduct alleged." 4 *Ashcroft v. Iqbal*,
556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). The plausibility 5 standard is not
akin to a "probability requirement," but it requires more than a sheer possibility 6 that a defendant
has acted unlawfully. *Iqbal*, 556 U.S. at 678. 7 For purposes of dismissal under Rule 12(b)(6), the
court generally considers only 8 allegations contained in the pleadings, exhibits attached to the
complaint, and matters properly 9 subject to judicial notice, and construes all well-pleaded
material factual allegations in the light 10 most favorable to the nonmoving party. *Chubb Custom*
Ins. Co. v. Space Sys./Loral, Inc., 710 11 F.3d 946, 956 (9th Cir. 2013); *Akhtar v. Mesa*, 698 F.3d
1202, 1212 (9th Cir. 2012). 12 Dismissal under Rule 12(b)(6) may be based on either: (1) lack of a

cognizable legal theory, or (2) insufficient facts under a cognizable legal theory. Chubb Custom Ins. Co., 710 F.3d 14 at 956. Dismissal also is appropriate if the complaint alleges a fact that necessarily defeats the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-1229 (9th Cir. 1984).
16 II. Analysis 17 Plaintiff alleges that defendant performed an appendectomy on January 16, 2022. ECF

18 No. 31 at 8. He claims that Shah failed to remove the appendix, however, and knowingly failed 19 to apprise him of this fact for three weeks. Id. at 22-23. Defendant raises two arguments in 20 support of his motion for judgment on the pleadings. First, he argues that a document attached to 21 the complaint demonstrates that, at the earliest, he was aware that the appendix had not been 22 removed on January 18, 2022, when he received the pathologist report. ECF No. 71-1 at 5. Thus, 23 there was an approximately eight-day period, between January 19 and January 27, 2022, during 24 which plaintiff was unaware that his appendix had not been removed. Id. Second, defendant 25 contends that plaintiff's failure to file timely responses to his requests for admission renders 26 automatic an admission that there was no excessive risk to his health or safety caused by 27 defendant. Id. at 8. Neither argument is availing. 28 1 As to the first argument, the document in question is a discharge summary that provides, 2 as its discharge diagnosis: "[a]cute appendicitis, pathology report awaited." ECF No. 31 at 32. 3 This single line, in a medical report authored by the defendant, does not warrant judgment on the 4 pleadings. I cannot say, based solely on the pleadings, that an eight-day delay, rather than a 5 three-week delay, precludes a finding that defendant was deliberately indifferent. Moreover, the 6 fact that a pathology report was pending does not, without more, establish that defendant was 7 unaware that he had failed to remove plaintiff's appendix. To be sure, that is a possible and, 8 perhaps, intuitive conclusion, but it is not obvious or automatic. As in a motion to dismiss, 9 however, I must draw all inferences in favor of the non-moving party, and that precludes 10 judgment on the pleadings based on this argument. 11 I also reject defendant's argument that plaintiff's failure to timely respond to defendant's 12 requests for admission warrant judgment on the pleadings. Plaintiff disputes that he did not 13 timely respond to the requests. ECF No. 72 at 2. I find resolution of this discovery dispute 14 inappropriate at this juncture. Additionally, plaintiff's pro se status warrants a degree of leniency 15 and cautions against awarding judgment on the pleadings based on a failure to timely respond 16 to requests for admission. 17 Accordingly, it is RECOMMENDED that defendant's motion for judgment on the 18 pleadings, ECF No. 71, be DENIED. 19 These findings and recommendations are submitted to the United States District Judge 20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of 21 service of these findings and recommendations, any party may file written objections with the 22 court and serve a copy on all parties. Any such document should be captioned "Objections to 23 Magistrate Judge's Findings and Recommendations," and any response shall be served and filed 24 within fourteen days of service of the objections. The parties are advised that failure to file 25 objections within the specified time may waive the right to appeal the District Court's order. See 26 Turner v. Duncan,

158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 27 1991). 28 1 | 1718
SO ORDERED. 3 (— Dated: __July 30,2025 ssn (aioe
4 JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE
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