

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

Wilson v. Merritt

Wilson · No. 1:22-cv-00455-JLT-CDB (PC) · Decided April 28, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 DAVID WAYNE WILSON, Case No.: 1:22-cv-00455-JLT-CDB (PC) 12
Plaintiff, ORDER REGARDING PLAINTIFF’S LODGED SECOND AMENDED 13 v.
COMPLAINT AND DEFENDANTS’ REQUEST FOR SCREENING 14 LURA MERRITT, et al.,
(Docs. 81 & 82) 15 Defendants. 16 17 Plaintiff David Wayne Wilson is proceeding pro se and in
forma pauperis in this civil 18 rights action pursuant to 42 U.S.C. § 1983.

The action proceeds on Plaintiff’s constitutional 19 claims against Defendants Correa, Carlson,
and Merritt. 20 I. RELEVANT BACKGROUND 21 The Court issued its Discovery and
Scheduling Order on November 5, 2024. (Doc. 75.) 22 Relevant here, the deadline to amend
pleadings was set for February 5, 2025. (Id.) 23 On February 3, 2025, Plaintiff lodged a second
amended complaint.

(Doc. 81.) 24 On February 18, 2025, Defendants filed a request for screening of the amended
complaint. 25 (Doc. 82.) 26 On March 6, 2025, Plaintiff filed a document titled “Plaintiff’s
Opposition for Denial 27 Defendant’s Request for Screening of Plaintiff’s Second Amended
Complaint Under PLRA for Defendant’s Improper Purpose and Unnecessary Delay Court Order
Nov 5 2024.” (Doc.

85.) 1 II. DISCUSSION 2 A. The Lodged Second Amended Complaint 3 Rule 15(a) of the Federal
Rules of Civil Procedure states, in pertinent part: 4 (a) Amendments Before Trial. 5 (1) Amending
as a Matter of Course. A party may amend its pleading once as a matter of course no later than: 6
(A) 21 days after serving it, or 7 (B) if the pleading is one to which a responsive 8 pleading is
required, 21 days after service of a responsive pleading or 21 days after service of a 9 motion
under Rule 12(b), (e), or (f), whichever is earlier.

10 (2) Other Amendments. In all other cases, a party may amend 11 its pleading only with the
opposing party's written consent or the court's leave. The court should freely give leave when 12
justice so requires. 13 Fed. R. Civ. P. 15(a)(1) & (2).

In evaluating a motion to amend, the Court considers the following 14 factors: (1) undue delay;
(2) bad faith; (3) prejudice to the opponent; and (4) futility of 15 amendment. *Loehr v. Ventura*
Cnty. Cmty. Coll. Dist., 743 F.2d 1310, 1319 (9th Cir. 1984). These 16 factors are not of equal

weight as prejudice to the opposing party has long been held to be the 17 most critical factor in determining whether to grant leave to amend.

See *Sonoma Cnty. Ass'n of 18 Retired Employees v. Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013) (“[T]he consideration 19 of prejudice to the opposing party carries the greatest weight”); *Eminence Capital, LLC v. 20 Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (“As this circuit and others have held, it is the 21 consideration of prejudice to the opposing party that carries the greatest weight”).

22 As noted above, the deadline to amend pleadings was set for February 5, 2025. And while 23 Plaintiff submitted a second amended complaint prior to the relevant deadline, he has failed to 24 comply with Rule 15 because he failed to file a motion seeking leave to file an amended 25 complaint¹ or to obtain Defendants’ written consent for doing so. 26 1 See, e.g., *Howard v. Rodriguez*, No. 1:24-cv-00285-JLT-SAB (PC), 2024 WL 3970464, at *3 (E.D.

Cal. 27 Aug. 28, 2024) (noting “Plaintiff cannot seek to amend the complaint by way of an attachment to his motion for appointment of counsel, without filing a separate motion seeking such relief and meeting the Rule 15 standard”); *Bradford v. Ogbuehi*, No. 1:17-cv-01128-DAD-SAB (PC), 2020 WL 1970063, at *3 1 Rule 15(a)(1) —allowing for amendment as a matter of course— does not apply here 2 because Defendants filed an answer to Plaintiff’s first amended complaint on March 19, 2024 3 (Doc.

53), and more than 21 days have elapsed following that filing. Thus, Plaintiff is required to 4 obtain Defendants’ written consent or the Court’s leave. See Fed. R. Civ. P. 15(a)(2). Here, 5 however, Plaintiff did not seek and obtain Defendants’ written consent to any amendment. (Doc. 6 82 at 5, ¶ 2.) Nor does Plaintiff have the Court’s leave to file a second amended complaint.

When 7 Plaintiff submitted his second amended complaint to the Court, it was lodged rather than filed 8 because no motion seeking the Court’s leave to amend accompanied the second amended 9 complaint. Hence, Plaintiff’s submission is procedurally defective because it does not comply 10 with Rule 15(a). 11 In his opposition to Defendants’ request for screening, Plaintiff contends that his second 12 amended complaint “meets” subdivision (d) of Rule 15 and complies with the Court’s scheduling 13 order.

(See Doc. 85 at 3.) Subdivision (d) concerns supplemental pleadings and provides as 14 follows: 15 On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, 16 occurrence, or event that happened after the date of the pleading to be supplemented.

The court may permit supplementation even 17 though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the 18 supplemental pleading within a specified time. 19 Fed. R. Civ. P. 15(d), *italics added*.

Here again, Plaintiff did not file any motion seeking leave to 20 file a supplemental pleading in this action. And, significantly, Plaintiff's lodged pleading does not 21 support this argument—the title of the pleading lodged February 3, 2025, commences with the 22 words “SECOND AMENDED COMPLAINT” and makes no reference to a supplemental 23 pleading. (Doc. 81.)

Nor does the Court find any basis to permit such a filing. 24 (E.D. Cal. Apr. 24, 2020) (noting plaintiff had not been granted leave to file a second amended complaint 25 and did not file a motion for leave to amend; advising plaintiff “is required to familiarize himself with the 26 Federal and Local Rules and comply with both the rules and the orders of the court in litigating this matter”); *Houston v. Rio Consumnes Correctional Facility*, No. 2:15-cv-2055 WBS KJN P, 2016 WL 27 7474909, at *1 (E.D.

Cal. Dec. 29, 2016) (striking proposed second amended complaint because answer filed by defendants and plaintiff failed to file a motion to amend or a stipulation to amend the complaint signed by all parties). 1 B. Previous Findings and Analysis 2 In its First Screening Order addressing Plaintiff's complaint, issued April 4, 2023, the 3 undersigned found the complaint stated the following cognizable claims: (1) a First Amendment 4 retaliation claim against Defendant Merritt; (2) Eighth Amendment deliberate indifference to 5 serious medical needs claims against Defendants Correa² and Merritt; and (3) a Fourteenth 6 Amendment equal protection violation against Defendant Carlson; however, Plaintiff's complaint 7 failed to state any other cognizable claims for relief against any other defendant.

(Doc. 28.) 8 Plaintiff was granted leave to file a first amended complaint, curing the deficiencies identified in 9 the order, within 21 days. (Id. at 27-28.) 10 Thereafter, on April 21, 2023, Plaintiff filed a first amended complaint. (Doc. 32.)

On 11 November 21, 2023, the undersigned issued Findings and Recommendations to Dismiss Certain 12 Claims and Defendants Following Screening of Plaintiff's First Amended Complaint. (Doc. 34.) 13 In particular, the Court found Plaintiff alleged the following cognizable claims: (1) Eighth 14 Amendment deliberate indifference to serious medical needs claims against Defendants Correa,³ 15 Merritt⁴ and Carlson,⁵ in their individual capacities; (2) a First Amendment retaliation claim 16 against Defendant Merritt,⁶ in her individual capacity; (3) a Fourteenth Amendment equal 17 protection violation against Defendant Carlson,⁷ in her individual capacity; and (4) a state law 18 equal protection violation against Defendant Carlson,⁸ in her individual capacity; it recommended 19 the action proceed on the foregoing claims and that any remaining claims against those 20 2 Defendant Correa was sued under the name “Fishburn.” (See Doc.

53 [Answer].) 21 3 Specifically, for Correa's refusal to address “Plaintiff's incontinence and need for an egg crate mattress.” (Doc. 34 at 10.) 22 4 For Merritt's refusal to address Plaintiff's complaints of “headaches, dizziness, and severe back and neck pain.” 23 (Doc. 34 at 10.) 24 5 For

Carlson's refusal to see or treat Plaintiff following his "complaints of dizziness and severe tension headaches." (Doc.

34 at 10.) 25 6 For Merritt's refusal "to treat Plaintiff because he filed health care grievances complaining about Merritt's lack of 26 cleanliness and other deficiencies" (Doc. 34 at 11.) 27 7 For Carlson's refusal to allow Plaintiff to see a physician because he is African American. (Doc. 34 at 15.) 8 1 defendants be dismissed.⁹ (Id. at 4-17.) Over Plaintiff's objections, the Findings and 2 Recommendations were adopted in full by District Judge Jennifer L. Thurston on December 19, 3 2023.

(Doc. 39.) Judge Thurston also denied Plaintiff's motion for reconsideration of her order 4 adopting on January 3, 2024. (Doc. 45.) Further, Plaintiff's appeal to the Ninth Circuit Court of 5 Appeals was dismissed for a lack of jurisdiction. (Docs. 52 [Order] & 55 [Mandate].)

Therefore, 6 any previously dismissed claims may not be reasserted, nor may any previously dismissed 7 defendant be named, in an amended complaint. 8 The Court has briefly reviewed the lodged second amended complaint, titled "Second 9 Amended Complaint for Declaratory and Injunctive Relief and Compensatory Punitive and 10 Prospective Damages for Deliberate Indifference by Delayed Care for Retaliation to Free Speech 11 Inadequate Medical Care No Doctor B-Facility Clinic by Nurse Practitioner." 12 It appears Plaintiff seeks to assert Eighth Amendment deliberate indifference to serious 13 medical needs claims against Defendants Carlson, Correa, and Merritt (first cause of action), First 14 Amendment retaliation against Defendant Merritt (second cause of action), and a claim (third 15 cause of action) styled "(Failure to treat Eighth Amendment Condition for Further Significant 16 Injury)," referencing the "Plata SETTLEMENT and Armstrong ADA RA Remedial Plan 17 3/21/2021," that "Defendants have violated plaintiff & other similarly situated guaranteed rights 18 by Eighth Amendment's U.S. Constitution for access to adequate medical doctor's, and medical 19 Nurse's Supervisor's [sic] inadequate care that does not cause delayed care and physical harm," 20 and "medical denials and SATF non-compliance that are not reasonable related to any legitimate 21 penological interests ... where harassment for denied and delayed medical care." (Doc.

81 and 22 10-11.) Further, Plaintiff asserts factual allegations arising after his first amended complaint was 23 filed and screened, to wit: (1) the fact Plaintiff "received" the egg crate mattress on June 7, 2023, 24 asserting a delay of "four ½ years", and a delay of "Propet Orthopedic Boots" until "8/2024;" and 25 (2) that Plaintiff filed a health care request "for Single Cell & seen NP Merritt, for Incontinent 26 [sic] & C-PAP Alarm & distance 60-90 ft.

Thermal Underwear soiled & Merritt denied deferring 27 9 1 Custody, & 602 #300697 GRANTED & CDC Memo 1/19/2016 Grants." (Doc. 81 at 9.) 2 First, the review reveals Plaintiff's lodged second amended complaint seeks to name 3 Defendants Carlson, Correa, and Merritt "in their individual and official capacities." (Doc. 81 at 4 3.)

As Plaintiff has been previously advised, he may not seek monetary damages against 5 individual defendants in their official capacities because such claims are barred by the Eleventh 6 Amendment. (See Doc. 28 at 12, 26 & Doc. 34 at 7-8.)

Therefore, the lodged second amended 7 complaint is improper as concerns the named defendants in an official capacity. 8 Second, to the extent Plaintiff's lodged second amended complaint specifically seeks to 9 assert that Defendant Merritt delayed medical care by refusing to provide an egg crate mattress 10 and orthopedic boots until June 2023, those facts are not truly new or necessary to his Eighth 11 Amendment deliberate indifference to serious medical needs claims.

Rather, any delay by Merritt 12 is included in Plaintiff's claim that she refused to address his complaints of headaches, dizziness, 13 and severe back and neck pain in 2019 and/or 2020. Amending the complaint to include the date 14 Plaintiff received the items about which he previously asserted were denied him is not necessary 15 because delay was inferred from the assertions made in Plaintiff's original complaint filed April 16 18, 2022, and first amended complaint filed April 21, 2023.

17 As concerns Plaintiff's assertions regarding a "health care request" and related grievance 18 that was purportedly granted, despite Plaintiff's failure to include any relevant dates, these factual 19 allegations alone do not state a cognizable claim for relief.

As Plaintiff was also previously 20 advised, "Prisoners do not have 'a separate constitutional entitlement to a specific prison 21 grievance procedure.' *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir 2003) (citing *Mann v. 22 Adams*, 855 F.2d 639, 640 (9th Cir. 1988))." (See Doc. 28 at 12.) 23 Plaintiff has had previous opportunities to amend his complaint. He was provided specific 24 information concerning the deficiencies identified in his original and first amended complaints 25 during the screening process, and yet the lodged second amended complaint contains the same 26 deficiencies: to wit, improper official capacity claims against Defendants Carlson, Correa, and 27 Merritt; and the outcome of a grievance or grievances.

Plaintiff has either chosen to ignore this 1 Thus, even had Plaintiff properly moved to file an amended complaint, this Court finds granting 2 Plaintiff further leave to amend would have been futile. See *Hartman v. CDCR*, 707 F.3d 1114, 3 1129-30 (9th Cir. 2013) (affirming dismissal of first amended complaint and finding leave to 4 amend futile where complaint's allegations belied plaintiff's entitlement to relief); see also 5 *Metzler Inv.*

GMBH v. Corinthian Colls., Inc., 540 F.3d 1049, 1072 (9th Cir. 2008) (explaining 6 that "the district court's discretion to deny leave to amend is particularly broad where plaintiff has 7 previously amended the complaint") (citation & internal quotation marks omitted). 8 In sum, Plaintiff failed to obtain Defendants' consent to file an amended complaint, and 9 he failed to

timely file a motion seeking the Court's leave to do so, as required by Rule 15 of the 10 Federal Rules of Civil Procedure.

Further, despite the fact Plaintiff failed to seek this Court's 11 leave to file a second amended complaint and failed to obtain Defendants' consent to do so, the 12 proposed amendments in the lodged second amended complaint are unnecessary to the extent 13 Plaintiff asserts a delay in receipt of the egg crate mattress and/or orthopedic boots, and futile to 14 the extent he seeks to assert a claim based upon the denial of a later grievance and as to any 15 official capacity claim against the named defendants.

The Court will strike the lodged second 16 amended complaint and deny Defendants' request for screening as moot. This action continues to 17 proceed only on the claims asserted in the operative first amended complaint. 18 III. CONCLUSION AND ORDER 19 Accordingly, the Court HEREBY ORDERS: 20 1.

The Clerk of the Court is directed to STRIKE the lodged second amended complaint 21 (Doc. 81) submitted on February 3, 2025; 22 2. Defendants' request for screening of the lodged second amended complaint (Doc. 82) 23 is DENIED as moot; 24 3. This action proceeds on the operative first amended complaint; and 25 4.

The parties are reminded that the Discovery and Scheduling Order for this action was 26 modified on March 10, 2025. (See Doc. 86.) More particularly, the remainder of the 27 deadlines were modified as follows: 1 b. The deadline for the completion of discovery was vacated pending final 2 determination of Defendants' anticipated exhaustion motion by the assigned 3 district judge.

The deadline will be reset later, if necessary; and 4 c. The deadline for the filing of a dispositive motion was vacated pending final 5 determination of Defendants' anticipated exhaustion motion by the assigned 6 district judge.

The deadline will be reset later, if necessary. 7 | ITIS ORDERED. | Dated: _ April 28, 2025 | ☐ D
9 UNITED STATES MAGISTRATE JUDGE 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26
27 28