

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Foust v. Akintola

Foust · No. 2:23-cv-1208 DJC AC P · Decided August 29, 2025

SUMMARY

The United States District Court for the Eastern District of California screens a prisoner’s fifth amended complaint under 28 U.S.C. § 1915A. The court allows an Eighth Amendment deliberate-indifference claim against defendant Akintola to proceed, denies appointed counsel, and denies as moot a motion for an extension of time. It recommends dismissing without leave to amend the claims against Kahlon and Anugwara based on taking plaintiff’s blood pressure, while maintaining the prior dismissal of claims against Campos and certain claims against Kahlon.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 29, 2025
DOCKET	2:23-cv-1208 DJC AC P
DISPOSITION	other
PROCEDURAL POSTURE	Screening order and findings and recommendations in a pro se prisoner civil-rights action under 42 U.S.C. § 1983. The magistrate judge considered plaintiff’s fifth amended complaint, a motion to appoint counsel, and related motions.
STANDARD OF REVIEW	Statutory screening under 28 U.S.C. § 1915A(a); the complaint must contain sufficient factual matter to state a facially plausible claim, and allegations are accepted as true and construed in the light most favorable to the plaintiff.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- prisoners rights
- civil rights
- civil procedure
- motions to dismiss
- health law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether defendant's withdrawal of a motion to dismiss and request for screening constituted consent to plaintiff's filing of a fifth amended complaint under Federal Rule of Civil Procedure 15(a)(2).
2. Whether the fifth amended complaint stated a cognizable Eighth Amendment deliberate-indifference claim against Akintola.
3. Whether the claims against Campo, Kahlon, and Anugwara failed to state a claim or were barred from further amendment based on prior dismissal and the allegations that medical staff responded to plaintiff's high blood-pressure readings.
4. Whether plaintiff demonstrated exceptional circumstances warranting appointment of counsel in the § 1983 action.

HOLDINGS

1. Akintola's withdrawal of the motion to dismiss and request that the fifth amended complaint be screened constituted consent to the amendment, allowing the court to screen the fifth amended complaint despite plaintiff's having filed it outside the period for amendment as of right.
2. The fifth amended complaint adequately stated an Eighth Amendment deliberate-indifference claim against Akintola.
3. The allegations against Kahlon and Anugwara based on taking plaintiff's high blood-pressure readings failed to state an Eighth Amendment deliberate-indifference claim, and dismissal without leave to amend was recommended.
4. Plaintiff's motion to appoint counsel was denied because he did not demonstrate exceptional circumstances.

KEY QUOTATIONS

“Plaintiff has sufficiently alleged facts showing that after Ankintola changed his medication, his blood pressure shot up to dangerous levels, and that Ankintola was notified of the change but took no action to address the problem.” (at 5)

“Given plaintiff’s continued failure to allege facts sufficient to state claims against these defendants, and that the allegations against these defendants show that they sent him to the hospital, it does not appear that further amendment would result in cognizable claims against them.” (at 7)

FACTUAL BACKGROUND

Plaintiff, a state prisoner, alleged that physician assistant Akintola changed his blood-pressure medication without notice, after which his blood pressure rose to dangerous levels, and that Akintola failed to respond after being notified. Plaintiff also alleged that nurses Kahlon and Anugwara recorded dangerously high blood-pressure readings and that correctional officer Campo was present. The complaint alleged that Kahlon and Anugwara sent

plaintiff to a hospital the next day, while plaintiff separately alleged that Kahlon attempted to give him incorrect medication.

PROCEDURAL HISTORY

On screening the fourth amended complaint, the court allowed a deliberate-indifference claim against Akintola to proceed and dismissed claims against Campo, Kahlon, Anugwara, and Doe defendants without leave to amend. Akintola moved to dismiss, but after plaintiff filed a fifth amended complaint without prior leave, Akintola withdrew the motion and requested screening, which the court treated as consent to the amendment. The court screened the fifth amended complaint, denied appointment of counsel, allowed the claim against Akintola to proceed, maintained prior dismissals against Campo and Kahlon, and recommended dismissal without leave to amend of the claims against Kahlon and Anugwara based on taking plaintiff's blood pressure.

DISPOSITION

other

CASES CITED

- Neitzke v. Williams, 490 U.S. 319, 325, 327 (1989)
- Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989)
- Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam)
- Jenkins v. McKeithen, 395 U.S. 411, 421 (1969)
- Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
- Cato v. United States, 70 F.3d 1103, 1105-06 (9th Cir. 1995)
- Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989)
- Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)
- Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)
- Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)