

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

Rosner v. Wellpath

Rosner · No. 1:24-cv-01145-SAB (PC) · Decided April 1, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 JESSIE ROSNER, No. 1:24-cv-01145-SAB (PC) 12 Plaintiff, ORDER
DIRECTING CLERK OF COURT TO RANDOMLY ASSIGN A DISTRICT JUDGE 13 v. TO
THIS ACTION 14 WELLPATH, et al., FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION 15 Defendants. (ECF No. 14) 16 17 Plaintiff is
proceeding pro se and in forma pauperis in this action filed pursuant to 42 18 U.S.C. § 1983.

19 Plaintiff's complaint in this action was filed on September 26, 2024. (ECF No. 1.) 20 On
October 31, 2024, the Court screened the complaint, found that Plaintiff failed to state a 21
cognizable claim for relief, and granted Plaintiff thirty days to file an amended complaint. (ECF
22 No. 7.) 23 Plaintiff failed to file an amended complaint or otherwise respond to the October 31,
2024 24 order.

Therefore, on January 7, 2025, the Court issued an order for Plaintiff to show cause why 25 the
action should not be dismissed. (ECF No. 11.) On January 23, 2025, Plaintiff filed a motion 26 for
an extension of time to file an amended complaint. (ECF No. 12.)

On January 24, 2025, the 27 Court discharged the order to show cause and granted Plaintiff thirty
days to file an amended 28 1 complaint. (ECF No. 13.) After Plaintiff again failed to file an
amended complaint, the Court 2 ordered Plaintiff to show cause why the action should not be
dismissed. (ECF No. 14.) Plaintiff 3 has failed to respond to the latest order to show cause and the
time to do so has passed.

4 I. 5 SCREENING REQUIREMENT 6 The Court is required to screen complaints brought by
prisoners seeking relief against a 7 governmental entity or officer or employee of a governmental
entity. 28 U.S.C. § 1915A(a). The 8 Court must dismiss a complaint or portion thereof if the
prisoner has raised claims that are legally 9 “frivolous or malicious,” that “fail[] to state a claim on
which relief may be granted,” or that 10 “seek[] monetary relief against a defendant who is
immune from such relief.” 28 U.S.C. § 11 1915(e)(2)(B); see also 28 U.S.C. § 1915A(b).

12 A complaint must contain “a short and plain statement of the claim showing that the 13 pleader
is entitled to relief....” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 14 required, but
“[t]hreadbare recitals of the elements of a cause of action, supported by mere 15 conclusory

statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 16 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Moreover, Plaintiff must demonstrate 17 that each defendant personally participated in the deprivation of Plaintiff’s rights. *Jones v. 18 Williams*, 297 F.3d 930, 934 (9th Cir. 2002). 19 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings 20 liberally construed and to have any doubt resolved in their favor. *Wilhelm v. Rotman*, 680 F.3d 21 1113, 1121 (9th Cir.

2012) (citations omitted). To survive screening, Plaintiff’s claims must be 22 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer 23 that each named defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678-79; *Moss 24 v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

The “sheer possibility that a defendant 25 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s 26 liability” falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d 27 at 969. 28 II. 1 COMPLAINT ALLEGATIONS 2 The Court accepts Plaintiff’s allegations in the complaint as true only for the purpose of 3 the screening requirement under 28 U.S.C. § 1915.

4 Plaintiff is detained at the Madera County Jail where the allegations arose. Upon intake 5 into the Madera County Jail, Plaintiff was denied his medication that was prescribed through the 6 California Department of Corrections and Rehabilitation (CDCR).

In addition, nurse Eva placed 7 Plaintiff in suicide segregation. Psych tech, Sean, delayed Plaintiff interview with Dr. Baker who 8 could prescribe the medication while waiting for his CDCR records. Dr. Baker claimed to review 9 Plaintiff’s medical chart and claimed he had no active medication. Dr. Baker also determined, 10 without interviewing Plaintiff, that he did not need his medication, even though a team of psych 11 techs and doctors determined that Plaintiff did require the medication.

It would be a violation of 12 Plaintiff’s parole if the medication was not taken. This has been an ongoing issue at Madera 13 County Jail. Plaintiff has put in multiple requests and has not received the medication. Plaintiff 14 has battled with his issues these months, some days are better than others, but the bad days are 15 bad. Plaintiff struggles with what is real and what is perceived.

Plaintiff’s medication helps him 16 stay stable, without it his life can be a roller coaster ride. Plaintiff has made it known to the 17 Defendants in this case and just been shuffled around by medical and jail staff. 18 III. 19 DISCUSSION 20 A. Wellpath as Defendant 21 “A municipality cannot be held liable solely because it employs a tortfeasor-or, in other 22 words, a municipality cannot be held liable under § 1983 on a respondeat superior theory.” 23 *Monell v. Dep’t of Soc.*

Servs., 436 U.S. 658, 691(1978). Therefore, counties and municipalities 24 may be sued under § 1983 only upon a showing that an official policy or custom caused the 25 constitutional tort. Id. at 691. 26 “In order to state a claim under Monell, a party must: (1) identify the challenged policy or 27 custom; (2) explain how the policy or custom is deficient; (3) explain how the policy or custom 28 caused the plaintiff harm; and (4) reflect how the policy or custom amounted to deliberate 1 indifference, i.e. show how the deficiency involved was obvious and the constitutional injury was 2 likely to occur.” Harvey v. City of S. Lake Tahoe, 2012 WL 1232420, at *3 (E.D.

Cal. Apr. 12, 3 2012) (citing Young v. City of Visalia, 687 F. Supp. 2d 1141, 1148 (E.D. Cal. 2009)). “In other 4 words, a plaintiff must plead (1) that the plaintiff ‘possessed a constitutional right of which [he or 5 she] was deprived; (2) that the municipality had a policy; (3) that this policy amounts to 6 deliberate indifference to the plaintiff’s constitutional right; and, (4) that the policy is the moving 7 force behind the constitutional violation.’ ” Bradley v. County of San Joaquin, 2018 WL 8 4026996, at *9 (E.D.

Cal. Aug. 23, 2018) (quoting Plumeau v. Sch. Dist. No. 40 Cnty. of 9 Yamhill, 130 F.3d 432, 438 (9th Cir. 1997)). 10 It appear that defendant Wellpath is a private company contracted with Madera County to 11 provide medical care at the Madera County Jail. See Patino v. County of Monterey, 2023 WL 12 375349, at *1 (N.D. Cal. Jan. 24, 2023) (“The county contracts with defendant Wellpath, LLC 13 (“Wellpath”), a private company, to provide medical, mental health and dental services to inmates 14 at the Jail.”).

A private entity under contract to provide medical services to a county jail may be 15 sued under § 1983. Estate of Miller v. County of Sutter, 2020 WL 6392565, at *10 (E.D. Cal. 16 Oct. 30, 2020). Private entities acting under color of law may be liable under Monell. Tsao v. 17 Desert Palace, Inc., 698 F.3d 1128, 1139 (9th Cir. 2012). 18 Here, Plaintiff does not allege sufficient facts to state a Monell claim against defendant 19 Wellpath.

Plaintiff does not allege that Defendant Wellpath failed to provide him with his 20 medication pursuant to a policy or custom of Defendant Wellpath and that the policy or custom 21 reflected deliberate indifference to the inhabitants of the Madera County Jail.

Accordingly, 22 Plaintiff fails to state a cognizable claim for relief. 23 B. Denial of Medication 24 As Plaintiff is detained at the Madera County Jail, the Court presumes that he is a pretrial 25 detainee. 26 Under the Fourteenth Amendment, pretrial jail detainees have the right to receive 27 adequate medical care during their detention. Gordon v. County of Orange, 888 F.3d 1118, 1125 28 (9th Cir.

2018); see also Lolli v. County of Orange, 351 F.3d 410, 418-19 (9th Cir. 2003). To 1 establish a deliberate indifference to medical needs claim against an individual defendant under 2 the due process clause of the Fourteenth Amendment, a pretrial detainee must show that: 3 (i) the

defendant made an intentional decision with respect to the conditions under which 4 the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to 5 abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's 6 conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries.

7 Gordon, 888 F.3d at 1125. The plaintiff must “prove more than negligence but less than 8 subjective intent—something akin to reckless disregard.” Id. (quoting *Castro v. County of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016)). 10 Here, Plaintiff has alleged nothing but a mere disagreement with the medical 11 professional's determination. Plaintiff fails to set forth sufficient factual details as to how long he 12 was denied medication, what medication was prescribed, and any specific harm he suffered as a 13 result.

Further, Plaintiff's claim that he was placed in suicide segregation does not give rise to a 14 cognizable claim for relief. In addition, although Plaintiff contends that psych tech, Sean, 15 delayed Plaintiff's interview with Dr. Baker, he fails to set forth sufficient support facts to give 16 rise to a plausible claim for relief.

Accordingly, the Court finds that Plaintiff has failed to state a 17 cognizable claim for relief. 18
IV. 19 FAILURE TO OBEY COURT ORDER AND FAILURE TO PROSECUTE 20 Here, the Court screened Plaintiff's complaint, and on October 31, 2024, an order issued 21 providing Plaintiff with the legal standards that applied to his claims, advising him of the 22 deficiencies that needed to be corrected, and granting him leave to file an amended complaint 23 within thirty days.

(ECF No. 7.) Plaintiff did not file an amended complaint or otherwise respond 24 to the Court's October 31, 2024 order. Therefore, on March 6, 2025, the Court ordered Plaintiff 25 to show cause within fourteen (14) days why the action should not be dismissed. (ECF No. 14.) 26 Plaintiff failed to respond to the March 6, 2025, order and the time to do so has passed.

27 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules 28 1 or with any order of the Court may be grounds for imposition by the Court of any and all sanctions 2... within the inherent power of the Court.” The Court has the inherent power to control its docket 3 and may, in the exercise of that power, impose sanctions where appropriate, including dismissal 4 of the action.

Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000). 5 A court may dismiss an action based on a party's failure to prosecute an action, failure to 6 obey a court order, or failure to comply with local rules. See, e.g. *Ghazali v. Moran*, 46 F.3d 52, 7 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 8 1258, 1260-61 (9th Cir.

1992) (dismissal for failure to comply with an order to file an amended 9 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply 10 with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone v. United 11 States Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court 12 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir.

1986) (dismissal for lack of 13 prosecution and failure to comply with local rules). 14 “In determining whether to dismiss an action for lack of prosecution, the district court is 15 required to consider several factors: ‘(1) the public’s interest in expeditious resolution of litigation; 16 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public 17 policy favoring disposition of cases on their merits; and (5) the availability of less drastic 18 sanctions.’ ” *Carey*, 856 F.2d at 1440 (quoting *Henderson*, 779 F.2d at 1423).

These factors guide 19 a court in deciding what to do, and are not conditions that must be met in order for a court to take 20 action. In *re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th 21 Cir. 2006) (citation omitted). 22 In this instance, the public’s interest in expeditious resolution of the litigation and the 23 Court’s need to manage its docket weigh in favor of dismissal.

In *re Phenylpropanolamine (PPA) 24 Products Liability Litigation*, 460 F.3d at 1226. Plaintiff was ordered to file an amended complaint 25 within thirty days of October 31, 2024 and has not done so. Plaintiff’s failure to comply with the 26 order of the Court by filing an amended complaint hinders the Court’s ability to move this action 27 towards disposition.

This action can proceed no further without Plaintiff’s compliance with the 28 order and his failure to comply indicates that Plaintiff does not intend to diligently litigate this 1 action. 2 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a 3 rebuttable presumption of prejudice to the defendants in this action.

In *re Eisen*, 31 F.3d 1447, 4 1452-53 (9th Cir. 1994). The risk of prejudice to the defendants also weighs in favor of dismissal. 5 The public policy in favor of deciding cases on their merits is greatly outweighed by the 6 factors in favor of dismissal. It is Plaintiff’s responsibility to move this action forward.

In order 7 for this action to proceed, Plaintiff is required to file an amended complaint curing the deficiencies 8 in the operative pleading. Despite being ordered to do so, Plaintiff did not file an amended 9 complaint or respond to the order to show cause and this action cannot simply remain idle on the 10 Court’s docket, unprosecuted.

In this instance, the fourth factor does not outweigh Plaintiff’s 11 failure to comply with the Court’s orders. 12 Finally, a court’s warning to a party that their failure to obey the court’s order

will result 13 in dismissal satisfies the “consideration of alternatives” requirement. *Ferdik*, 963 F.2d at 1262; 14 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424.

The Court’s October 31, 2024, order 15 requiring Plaintiff to file an amended complaint expressly stated: “If Plaintiff fails to file an 16 amended complaint in compliance with this order, the Court will recommend to a district ju6dge 17 that this action be dismissed consistent with the reasons stated in this order.” (ECF No. 7.)

In 18 addition, the Court’s March 6, 2025, order to show cause specifically stated: “Plaintiff’s failure to 19 comply with this order will result in a recommendation to dismiss the action for the reasons stated 20 above.” (ECF No. 14.)

Thus, Plaintiff had adequate warning that dismissal would result from her 21 noncompliance with the Court’s order. 22 V. 23 ORDER AND RECOMMENDATIONS 24 The Court has screened Plaintiff’s complaint and directed Plaintiff to file an amended 25 complaint within thirty days. Plaintiff has failed to comply with the Court’s order to file an 26 amended and has not responded to the Court’s order to show why the action should not be 27 dismissed.

In considering the factors to determine if this action should be dismissed, the Court 28 finds that this action should be dismissed for Plaintiff’s failure to obey the October 31, 2024 and 1 March 6, 2025 orders, failure to prosecute this action, and failure to state a cognizable claim for 2 relief. 3 Accordingly, it is HEREBY ORDERED that the Clerk of Court shall randomly assign a 4 District Judge to this action.

5 Further, it is HEREBY RECOMMENDED that this action be dismissed for Plaintiffs 6 failure to comply with a court orders, failure to prosecute, and failure to state a cognizable claim 7 for relief. 8 These Findings and Recommendations will be submitted to the United States District 9 | Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)().

Within fourteen 10 | (14) days after being served with these Findings and Recommendations, Plaintiff may file written 11 | objections with the Court, limited to 15 pages in length, including exhibits. The document should 12 | be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is 13 || advised that failure to file objections within the specified time may result in the waiver of rights 14 | onappeal.

Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. 15 | Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 16 17 18 IT IS SO ORDERED. DAM Le 19 | Dated: _April 1, 2025 _ OO STANLEY A. BOONE 20 United States Magistrate Judge 21 22 23 24 25 26 27 28