

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

Kern v. Patel

Case No. 25-cv-01881-CRB (PR) (N.D. Cal. Mar. 20, 2025) · No. 25-cv-01881-CRB (PR) · Decided March 20,
2025

OPINION

Kern v. Patel

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 JAMES CURTIS KERN, BX3065, Case No. 25-cv-01881-CRB (PR) 8 Plaintiff,

ORDER OF DISMISSAL

9 v.

10 DR. SAMIT PATEL,

11 Defendant(s). 12 Plaintiff, a prisoner at Pelican Bay State Prison (PBSP), has filed a pro se
complaint under 13 42 U.S.C. § 1983 alleging that doctors at PBSP have denied him adequate
treatment for a painful 14 lesion/mass in his forearm by cancelling and/or interfering with
previously scheduled pre-op and 15 specialist appointments to remove the lesion/mass and instead
are treating him only with NSAIDs 16 to which he is allergic. Plaintiff raised the same allegations
in a prior prisoner complaint, which 17 was ordered served on several named doctor defendants at
PBSP. See Kern v. Goller, No. 24-cv- 18 7094-CRB (PR) (N.D. Cal. Jan. 16, 2025) (order of
service). 19 A prisoner complaint that merely repeats pending or previously litigated claims may
be 20 considered abusive and dismissed under the authority of 28 U.S.C. § 1915A. Cf. Cato v.
United 21 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citing Bailey v. Johnson, 846 F.2d 1019,
1021 (5th

22 Cir. 1988)) (duplicative in forma pauperis complaint may be considered abusive and dismissed
23 under 28 U.S.C. § 1915). Because plaintiff raised and is litigating the same allegations and
claims 24 raised herein in Kern v. Goller, No. 24-cv-7094-CRB (PR), the instant complaint is
deemed 25 duplicative and abusive under § 1915A. That plaintiff names a new doctor defendant
in this later- 26 filed action does not compel a different result. See Bailey, 846 F.2d at 1021
(complaint repeating 27 same allegations asserted in earlier case, even if now filed against new
defendants, is subject to] For the foregoing reasons, plaintiff's complaint against Dr. Patel is
DISMISSED as 2 || duplicative and abusive under the authority of 28 U.S.C. § 1915A(b). See also
Kern v. Patel, No. 3 24-cv-9353-CRB (PR) (N.D. Cal. Jan. 17, 2025) (order dismissing prior case
against Dr. Patel as 4 || duplicative and abusive). 5 The clerk is directed to close the case and

terminate all pending motions as moot. 6 IT IS SO ORDERED. 7 Dated: March 20, 2025 8 2 Aa
CHARLES R. BREYER
9 United States District Judge 10 1] 12 2B 15 16 17 Z 18 19 20 21 22 23 24 25 26 27 28