

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

Kincaid v. CDCR

No. 2:25-cv-1705-JDP (P) (E.D. Cal. July 15, 2025) · No. 2:25-cv-1705-JDP (P) · Decided July 15, 2025

OPINION

(PC) Kincaid v. CDCR

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 TAI T. KINCAID, Case No. 2:25-cv-1705-JDP (P) 12 Plaintiff, 13 v. ORDER

14 CDCR,

15 Defendant. 16

17 18 Plaintiff, a state prisoner proceeding pro se, brings this § 1983 action against CDCR for 19
injuries he sustained when he was ejected from a golf cart while being transported around the 20
prison. ECF No. 1. The allegations fail to state a claim. Plaintiff may, if he chooses, file an 21
amended complaint that addresses the deficiencies noted herein. I will grant plaintiff's 22
application to proceed in forma pauperis. ECF No. 2. 23 Screening and Pleading Requirements 24
A federal court must screen the complaint of any claimant seeking permission to proceed 25 in
forma pauperis. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and 26
dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon 27
which relief may be granted, or seeks monetary relief from a defendant who is immune from such
28 relief. Id. 1 A complaint must contain a short and plain statement that plaintiff is entitled to
relief, 2 Fed. R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible
on its 3 face," Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The plausibility standard
does not 4 require detailed allegations, but legal conclusions do not suffice. See Ashcroft v. Iqbal,
556 U.S. 5 662, 678 (2009). If the allegations "do not permit the court to infer more than the mere
6 possibility of misconduct," the complaint states no claim. Id. at 679. The complaint need not 7
identify "a precise legal theory." Kobold v. Good Samaritan Reg'l Med. Ctr., 832 F.3d 1024, 8
1038 (9th Cir. 2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that 9
give rise to an enforceable right to relief." Nagrampa v. MailCoups, Inc., 469 F.3d 1257, 1264 10
n.2 (9th Cir. 2006) (en banc) (citations omitted). 11 The court must construe a pro se litigant's
complaint liberally. See Haines v. Kerner, 404 12 U.S. 519, 520 (1972) (per curiam). The court
may dismiss a pro se litigant's complaint "if it 13 appears beyond doubt that the plaintiff can
prove no set of facts in support of his claim which 14 would entitle him to relief." Hayes v. Idaho

Corr. Ctr., 849 F.3d 1204, 1208 (9th Cir. 2017). 15 However, “a liberal interpretation of a civil rights complaint may not supply essential elements 16 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 17 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)). 18 Analysis 19 Plaintiff alleges that on August 17, 2023, he was in a golf cart being transported from 20 New Folsom State Prison to Old Folsom State Prison when the cart tipped and ejected him. ECF

21 No. 1 at 3. Plaintiff suffered injury to his neck, spine, and right hip. Id. Plaintiff purports to 22 bring a negligence claim against defendant CDCR. Id. 23 The complaint fails to state a claim for two main reasons. First, the only named defendant 24 is CDCR. However, CDCR is not a proper defendant because it is a state agency that is immune 25 from suit under the Eleventh Amendment. See Will v. Michigan Dep’t of State Police, 491 U.S. 26 58, 66 (1989); Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam) (holding 27 that prisoner’s Eighth Amendment claims against CDCR for damages and injunctive relief were 28 barred by Eleventh Amendment immunity); Pennhurst State Sch. & Hosp. v. Halderman, 465 1 U.S. 89, 100 (1984) (explaining that Eleventh Amendment immunity extends to state agencies). 2 Second, plaintiff only asserts a state law claim for negligence. Therefore, this court’s jurisdiction 3 depends on diversity jurisdiction. See 28 U.S.C. §§ 1331, 1332; see also Rainero v. Archon 4 Corp., 844 F.3d 832, 839 (9th Cir. 2016) (“For a federal court to exercise diversity jurisdiction 5 under § 1332(a), the amount in controversy must exceed \$75,000, and the parties must be citizens 6 of different states.”). Diversity jurisdiction exists in all civil actions in which there is complete 7 diversity of citizenship of the parties and the amount in controversy exceeds \$75,000. 28 U.S.C. 8 § 1332. Because plaintiff and defendant are not diverse, this court lacks jurisdiction over 9 plaintiff’s claim. 10 Accordingly, plaintiff’s complaint is dismissed for failure to state a claim. I will allow 11 plaintiff a chance to amend his complaint before recommending that this action be dismissed. If 12 plaintiff decides to file an amended complaint, the amended complaint will supersede the current 13 one. See Lacey v. Maricopa Cnty., 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means 14 that the amended complaint will need to be complete on its face without reference to the prior 15 pleading. See E.D. Cal. Local Rule 220. Once an amended complaint is filed, the current one no 16 longer serves any function. Therefore, in an amended complaint, as in the original, plaintiff will 17 need to assert each claim and allege each defendant’s involvement in sufficient detail. The 18 amended complaint should be titled “First Amended Complaint” and refer to the appropriate case 19 number. If plaintiff does not file an amended complaint, I will recommend that this action be 20 dismissed. 21 Accordingly, it is hereby ORDERED that: 22 1. Plaintiff’s request for leave to proceed in forma pauperis, ECF No. 2, is GRANTED. 23 2. Plaintiff’s complaint, ECF No. 1, is DISMISSED with leave to amend. 24 3. Within thirty days from service of this order, plaintiff shall file either (1) an amended 25 complaint or (2) notice of voluntary dismissal of this action without prejudice. 26 4. Failure to timely file either an amended complaint or notice of voluntary dismissal may 27 result in the imposition of sanctions, including a recommendation that

this action be dismissed 28 with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 1 5.
The Clerk of Court shall send plaintiff a complaint form with this order. 2 3 IT IS SO ORDERED.

4 (_ Dated: _ July 15, 2025 q——

5 JEREMY D. PETERSON

6 UNITED STATES MAGISTRATE JUDGE

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