

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA

**Ramsey v. Thompson**

No. 3:23-cv-1920-JAH-DDL (S.D. Cal. Mar. 25, 2025) · No. 3:23-cv-1920-JAH-DDL · Decided March 25,  
2025

---

OPINION

Ramsey v. Thompson

PER CURIAM.

1 2 3 4 5 6 7 8

9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 12 DANIEL C. RAMSEY, Case No.: 23-cv-1920-JAH-DDL 13 Plaintiff, ORDER  
GRANTING

14 PLAINTIFF’S MOTION FOR

v.

LEAVE TO FILE A SECOND

15

AMENDED COMPLAINT

16 JOHN DOE #1, Warden, and N. and

17 THOMPSON, CDCR – CSR

Auditor, REPORT AND 18

RECOMMENDATION FOR

19 Defendants. ORDER DENYING MOTION

20 TO DISMISS AS MOOT

21 22 [Dkt. Nos. 37, 39] 23 24 Plaintiff Daniel C. Ramsey is proceeding pro se in this civil rights  
action 25 pursuant to 42 U.S.C. § 1983. Before the Court is a filing titled “Objection Motion 26 to  
Defendants’ Motion for Partial Dismissal and Motion for Attorney.” Dkt. No. 27 39. The Court  
construes Plaintiff’s filing as a motion for leave to file a second 28 amended complaint, and for  
the appointment of counsel. For the reasons stated 1 below, Plaintiff’s motion for leave to file a  
second amended complaint is 2 GRANTED.<sup>1</sup> Given the possibility of a superseding pleading, and  
as set forth 3 more fully below, the undersigned further RECOMMENDS Defendant N. 4  
Thompson’s (“Thompson”) Motion for Partial Dismissal of Plaintiff’s Amended 5 Complaint  
[Dkt. No. 37] be DENIED AS MOOT. 6 I.

7 BACKGROUND

8 A. Procedural History 9 Plaintiff filed his complaint pursuant to 42 U.S.C. § 1983 on October  
16, 2023, 10 against Thompson and H. Moseley. Dkt. No. 1. On December 12, 2023, the 11

Honorable John A. Houston, having conducted the sua sponte screening required 12 by 28 U.S.C. § 1915A, found Plaintiff pled sufficient facts in his complaint to state 13 a plausible Eighth Amendment claim against Thompson. Dkt. No. 3 at 5. 14 However, Judge Houston found Plaintiff had not stated an Eighth Amendment 15 claim against Moseley, and had not stated a claim against either defendant for 16 violation of the Equal Protection Clause or for conspiracy. Id. at 6, 8-9. Plaintiff 17 was afforded an opportunity to amend his complaint and ordered to either file an 18 amended pleading or inform the Court that he would proceed on his Eighth 19 Amendment claim against Thompson only. Id. at 9-11. 20 On January 5, 2024, Plaintiff filed a “Notice of Intent to Proceed,” informing 21 the Court he would proceed solely against Thompson. Dkt. No. 4. On January 22, 22 2024, Judge Houston dismissed Plaintiff’s remaining claims and ordered the 23 United States Marshal Service to serve process on Thompson. Dkt. No. 5. After 24 25 26 1 This Order disposes of Plaintiff’s request for leave to amend. Plaintiff’s 27 request for the appointment of counsel is addressed in a separate order. See Dkt. 28 1 some difficulty effecting service, Thompson waived service and entered the action 2 on December 6, 2024. Dkt. No. 16. 3 On December 16, 2024, Plaintiff filed a motion for a preliminary injunction. 4 Dkt. No. 18. On December 27, 2024, Thompson answered the complaint. Dkt. No. 5 22. On February 12, 2025, Judge Houston held a hearing on Plaintiff’s motion for 6 a preliminary injunction. Dkt. No. 33. The same day, Judge Houston denied the 7 motion and granted Plaintiff leave to amend his complaint. Dkt. No. 34. On

8 February 24, 2025, Plaintiff filed the First Amended Complaint (“FAC”), which is 9 now the operative pleading in the action. Dkt. No. 36. Plaintiff alleges in the FAC 10 “John Doe #1, Warden (RJD)” violated his right to Due Process, and failed to 11 protect him. See Dkt. No. 36 at 2, 7. Plaintiff also repeats his allegations that 12 Thompson was deliberately indifferent to his medical needs, and failed to protect 13 him from harm, in violation of his Eighth Amendment rights. Id. at 3-6. 14 On February 28, 2025, Thompson<sup>2</sup> moved for partial dismissal of the FAC. 15 On March 3, 2025, the undersigned ordered Plaintiff to respond to the motion to 16 dismiss by April 4, 2025. Dkt. No. 38. The instant motion for leave to amend 17 followed on March 10, 2025. 18 B. Plaintiff’s Allegations 19 This action arises out of Plaintiff’s transfer to High Desert State Prison 20 (“HDSP”). Plaintiff alleges he is a wheelchair-bound, disabled inmate who suffers 21 from paraplegia and other unspecified medical conditions, and as a result has a 22 “high-risk” medical designation. FAC at 3. In early 2023, Plaintiff was housed at 23 Richard J. Donovan (“RJD”), but was informed by his counselor that Plaintiff 24 / / / 25 / / / 26 27 2 Warden Doe has not been identified and thus has neither been served nor 28 1 would appear before the Inmate Classification Committee (“ICC”).<sup>3</sup> Id. Plaintiff 2 alleges he and his counselor reviewed potential alternative placements given his 3 high-risk medical designation. Id. However, on March 3, 2023, Thompson 4 “removed Plaintiff[‘s] high risk medical designation without any stated reason 5 and approved a transfer to [HDSP], which is not a high risk medical facility.” Id. 6 Plaintiff alleges this placement was against policy and that HDSP is unable to 7 provide for his medical needs,

which include assistance “showering, undressing, 8 [and] ambulat[ing].” Id. Plaintiff further alleges at the time of his transfer to 9 HDSP, he was scheduled for surgery which had been recommended by his 10 primary care provider and other surgeons at RJD, but the surgery was delayed 11 due to a lack of available surgeons at HDSP. Id. at 3-4. Plaintiff alleges his 12 condition has worsened because of this delay as well as the general conditions at 13 HDSP. Id. at 4; see also Plaintiff’s Declaration, Dkt. No. 36-1, at 3-5. Plaintiff alleges 14 Thompson was deliberately indifferent to his medical needs in overriding his 15 high-risk designation and authorizing the transfer to HDSP. FAC at 4-5. He 16 further alleges Thompson failed to notify her superiors that Plaintiff’s placement 17 at HDSP was not “suitable,” and failed to prevent the transfer despite her 18 knowledge that HDSP is “a violent environment,” thereby failing to protect 19 Plaintiff from further harm. Id. at 6. 20 Plaintiff also alleges he was not interviewed regarding his transfer to HDSP, 21 “as required by policy and procedures of CDCR and accord[ing] to his due process 22 rights.” FAC at 7. Plaintiff alleges “[o]n the first page” of his grievance form dated 23 March 3, 2023, “it has a box that reads, ‘By placing my initials in the box I waive

24 25 3 The timeline of events is somewhat unclear. Plaintiff alleges he was 26 informed of the ICC meeting in “March 2023,” but also that he and his counselor 27 “reviewed possible placements” on January 17, 2023. See FAC at 3. This 28 1 my right to receive an interview.” Id. Plaintiff states in the FAC, “I waive my 2 right to receive an interview. Plaintiff waive that right! Therefore he was not 3 given an opportunity to have witnesses or plead [sic] my case in defense.” Id. 4 (emphasis added). Plaintiff further alleges Warden Doe: 5 had a duty to insure [sic] that all his employees was [sic] following 6 procedure before and during Plaintiff transfer considering his medical 7 conditions and DPW status. Therefore, the Defendant violated Plaintiff[‘s] Due Process Right. The Defendant also failed to protect 8 because Defendant knew or should have known that the Plaintiff 9 should not have been sent back to HDSP. . . . 10 11 Id. Plaintiff seeks injunctive and monetary relief, and punitive damages. Id. at 9. 12 C. The Parties’ Arguments 13 In the motion to dismiss, Thompson argues Plaintiff’s procedural due 14 process claim against Warden Doe “fails as a matter of law.” Dkt. No. 37-1 at 5-6. 15 In support, Thompson argues prisoners “have no constitutional right to an 16 effective grievance or appeal process,” and that Plaintiff fails to allege Warden 17 Doe’s personal participation in the alleged deprivation of due process. Id. 18 Thompson also notes Plaintiff alleges he waived his right to a hearing, and asserts 19 “[Plaintiff] cannot create a due process violation by choosing to forego [sic] a 20 hearing.” Id. at 6. Thompson further asserts Plaintiff “fail[ed] to state a plausible 21 Eighth Amendment failure-to-protect claim” against Warden Doe. 22 In opposition, Plaintiff states there is an “error in a text word matter” in the 23 FAC, explaining he wrote “I waived my right to receive [an] interview” when he 24 meant to write, “I didn’t waive my right to receive [an] interview.” Dkt. No. 39 at 25 1, 3 (emphasis in original). Plaintiff further asserts Thompson “base[d]” the 26 motion to dismiss Warden Doe on this error, “focus[ing] on only a small part of 27 the sentence of error.” Id. at 2, 3. Plaintiff requests that “the Court allow his civil 28 complaint to be amended or accept the motion

for the small correctable errors.”

1 Id. at 5. Plaintiff does not offer any argument regarding Thompson’s other

2 asserted bases for dismissal. See generally id. 3 II.

#### 4 DISCUSSION

5 A. Leave to Amend Is Warranted 6 1. Legal Standards 7 Federal Rule of Civil Rule 15(a)(2) directs that “[t]he court should freely give 8 leave [to amend a pleading] when justice so requires.”

Fed. R. Civ. P. 15(a)(2). “In 9 exercising its discretion” whether to allow a party to amend, the Court “must be 10 guided by the underlying purpose of Rule 15 – to facilitate decision on the merits 11 rather than on the pleadings or technicalities.” DCD Programs, Ltd. v. Leighton, 833 12 F.2d 183, 186 (9th Cir. 1987). 4 Thus, while leave to amend is not guaranteed, it 13 “should be granted with extreme liberality.” Moss v. U.S. Secret Serv., 572 F.3d 962, 14 972 (9th Cir. 2009).

The Court must be especially generous permitting a pro se 15 plaintiff to amend his or her pleadings. See Ramirez v. Galaza, 334 F.3d 850, 861 (9th

16 Cir. 2003). Considering the liberality espoused by the Federal Rules, the Court

17 should not deny a motion to amend “unless amendment would cause prejudice to 18 the opposing party, is sought in bad faith, is futile, or creates undue delay.” Yakama 19 Indian Nation v. State of Wash. Dep’t of Revenue, 176 F.3d 1241, 1246 (9th Cir. 1999); 20 see also Foman v. Davis, 371 U.S. 178, 182 (1962). 21 2. Application 22 The Court begins with the “presumption under Rule 15(a) in favor of granting 23 leave to amend.” Eminence Cap. LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 24 2003) (emphasis in original). Here, Plaintiff wishes to correct a

small but 25 26 4 Unless otherwise noted, all citations are omitted, and in direct quotes, all 27 internal quotation marks, brackets, ellipses and footnotes are omitted, and all 28 1 meaningful error in the FAC, and the Court finds permitting Plaintiff to correct 2 the alleged error will add clarity to the pleadings, to the benefit of the parties and 3 the Court. 4 The Court turns to the “countervailing considerations [of] undue delay, 5 prejudice, bad faith, [and] futility.” Ctr. for Biological Diversity v. United States Forest 6 Serv., 80 F.4th 943, 956 (9th Cir. 2023). There is nothing in the record before the 7 Court to support a finding of bad faith or undue delay. To the contrary, Plaintiff 8 alerted the Court to his error, and requested permission to correct it, promptly 9 after receiving Thompson’s motion to dismiss. Likewise, the Court cannot find 10 Defendants would be prejudiced by the amendment. The case is in the early 11 stages, discovery has not yet commenced, and the Court has not set a trial date. 12 Nor can the Court conclude that the proposed amendment would be futile. 13 Without making any findings regarding the merits of Thompson’s motion to 14 dismiss – including on the issue of whether Thompson has standing to assert that 15 claims against Warden Doe are inadequately pled – Plaintiff’s proposed 16 amendment appears to obviate at least one asserted basis for dismissal. 17 For these reasons, Plaintiff’s request for leave to amend his complaint is 18 GRANTED. 19 B. Plaintiff Must File a Second Amended Complaint 20 An amended complaint supersedes any prior complaint. See CDK Global LLC 21 v. Brnovich, 16 F.4th 1266, 1274 (9th Cir. 2021). Although the Court has granted

22 Plaintiff leave to amend his complaint, he cannot do so by motion or 23 supplementation. See *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 925 (9th Cir. 2012); 24 CivLR 15.1 (requiring “[e]very pleading to which amendment is permitted . . . 25 must be complete in itself without reference to the superseded pleading.”). 26 Plaintiff must therefore file a Second Amended Complaint without reference 27 to any previous pleading. This includes any documents attached to any amended 28 complaint. For example, the Court notes the Form 602 dated March 3, 2023, which 1 corroborates his statement that he did not initial the box to waive his right to an 2 interview, was attached to Plaintiff’s original complaint, but not the FAC. See Dkt.

3 No. 1-3 at 15. The Court is not required to comb through prior, superseded

4 pleadings to ascertain Plaintiff’s allegations. See *Rhodes v. Robinson*, 621 F.3d 1002, 5 1005 (9th Cir. 2010) (noting “[a]s a general rule, when a plaintiff files an amended 6 complaint, the amended complaint super[s]edes the original, the latter being 7 treated thereafter as non-existent”) (emphasis added). Thus, it is very important 8 that Plaintiff allege all relevant facts in his Second Amended Complaint, and attach 9 any documents he believes support his allegations, without reliance on or 10 reference to his prior pleadings. 11 Plaintiff’s Second Amended Complaint must also comply with Federal Rule 12 of Civil Procedure 8 in all respects, meaning “each claim and the involvement of 13 each defendant must be alleged; . . . [and] must include a short and plain statement 14 of the grounds for the court’s jurisdiction, a short and plain statement of the claim 15 showing that the pleader is entitled to relief, and a demand for the relief sought.” 16 *Turley v. Lezano*, No. 3:22-CV-1719-GPC-DDL, 2023 WL 3727939, at \*2 (S.D. Cal.

17 May 30, 2023) (citing Fed. R. Civ. P. 8(a)(1)-(3)).

18 Finally, because “the use of Doe defendants in federal courts is generally 19 disfavored,” Plaintiff must identify Warden Doe by name if possible. See *Est. of 20 Osuna v. Cnty. of Stanislaus*, 392 F. Supp. 3d 1162, 1169 (E.D. Cal. 2019); see also *Cuda 21 v. Emps./Contractors/Agents at or OCCC*, No. CV 19-00084 DKW-KJM, 2019 WL 22 2062945, at \*4 (D. Haw. May 9, 2019) (“Doe defendants are generally disfavored 23 . . . because it is effectively impossible for the United States Marshal to serve an 24 anonymous defendant.”). The Court appreciates that there may be circumstances 25 where a plaintiff requires discovery to reveal a defendant’s identity. See *Est. of 26 Osuna*, 392 F. Supp. 3d at 1169 (acknowledging that “situations arise . . . where the 27 identity of alleged defendants will not be known prior to the filing of a complaint[, 28 and] the plaintiff should be given an opportunity through discovery to identify 1 the unknown defendants”). In this case, however, the Warden of Richard J. 2 Donovan Correctional Facility is a public figure whose identity is widely available 3 as a matter of public record. Therefore, Plaintiff must use all resources available 4 to him to identify the Warden by name. 5 To be clear, Plaintiff must complete a new prisoner civil rights complaint on 6 the Court’s form. Plaintiff’s Second Amended Complaint: (1) must name 7 Thompson and RJD Warden (identified by name if possible) as Defendants; (2) 8 must not name any additional defendants; (3) must reallege Plaintiff’s deliberate 9 indifference, failure-to-protect and due process causes of

action as stated in his 10 First Amended Complaint; and (4) must not add any other causes of action. 11 Plaintiff's Second Amended Complaint must bear the docket number 3:23-cv- 12 1920-JAH-DDL and must be clearly labeled "Second Amended Complaint." 13 Plaintiff is cautioned that any claims not realleged in the Second Amended 14 Complaint may be considered waived. See Lacey, 693 F.3d at 928. 15 C. Recommendation Regarding Motion to Dismiss 16 Rather than expend judicial resources resolving a Motion to Dismiss that 17 pertains to a superseded complaint, the Court finds the interests of judicial 18 economy would be best served by requiring Defendants to respond to Plaintiff's 19 Second Amended Complaint. See *De Souza v. Dawson Tech., Inc.*, No. 21-CV-1103 20 JLS (MSB), 2022 WL 3006045, at \*4 (S.D. Cal. July 28, 2022) (finding the "[p]arties' 21 and the Court's resources" would not be well spent "deciding a Motion to Dismiss 22 that is potentially obviated by" a forthcoming amendment to the complaint). For 23 these reasons, the undersigned RECOMMENDS Thompson's motion to dismiss 24 be DENIED AS MOOT. The undersigned further RECOMMENDS that 25 Defendants be ordered to respond to Plaintiff's Second Amended Complaint, 26 whether by responsive pleading or renewed motion, within 21 days of the entry 27 of the Second Amended Complaint on the docket. 28 / / / 1 IV.

## 2 CONCLUSION

3 For the reasons stated above: 4 1. Plaintiff's Motion for Leave to Amend [Dkt. No. 39] is GRANTED. By 5 |{not later than April 25, 2025, Plaintiff must file a Second Amended Complaint 6 ||consistent with the instructions above. If Plaintiff fails to timely file a Second 7 || Amended Complaint, the Court will presume the First Amended Complaint is the 8 || operative pleading and proceed accordingly. 9 2. Pursuant to 28 U.S.C. § 636(b)(1) and Civil Local Rule 72.3, the 10 |}undersigned Magistrate Judge respectfully RECOMMENDS that the District 11 ||Judge DENY AS MOOT Defendant Thompson's motion to dismiss [Dkt. No. 37] 12 ||and order Defendants to respond to Plaintiff's Second Amended Complaint, if one 13 filed, within 21 days of its entry on the docket. 14 3. Any objection to this Report and Recommendation must be filed with 15 Court and served on all parties by April 10, 2025. The document should be 16 || titled "Objections to Report and Recommendation." A party who fails to timely 17 || object may waive the right to raise those objections on appeal of the Court's order. 18 || See *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998). 19 || IT IS SO ORDERED. 20 || Dated: March 25, 2025 ee Lh, Tb L351 22 'Hon.DavidD.Leshner 23 United States Magistrate Judge 24 25 26 27 28