

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

Timothy D. Wilkins v. Daniel Smith, et al.

Case No. 25-cv-06426-HSG · No. 25-cv-06426-HSG · Decided October 30, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
TIMOTHY D. WILKINS, Case No. 25-cv-06426-HSG 8 Plaintiff, ORDER OF DISMISSAL 9 v.
10 DANIEL SMITH, et al., 11 Defendants. 12 13 Plaintiff, an inmate at California State Prison -
Lancaster, has filed a pro se action pursuant 14 to 42 U.S.C. § 1983. His second amended
complaint (Dkt. No. 10) is now before the Court for 15 review under 28 U.S.C. § 1915A.

16 DISCUSSION 17 A. Standard of Review 18 A federal court must conduct a preliminary
screening in any case in which a prisoner seeks 19 redress from a governmental entity or officer or
employee of a governmental entity. See 28 U.S.C. 20 § 1915A(a).

In its review, the court must identify any cognizable claims and dismiss any claims 21 that are
frivolous, malicious, fail to state a claim upon which relief may be granted or seek 22 monetary
relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 23 1915(e)(2)(B),
1915A(b)(1), (2). Pro se pleadings must, however, be liberally construed. See 24 *United States v.*
Qazi, 975 F.3d 989, 993 (9th Cir.

2020). 25 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
26 claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are
not 27 necessary; the statement need only “give the defendant fair notice of what the... claim is
and the 1 While Rule 8 does not require detailed factual allegations, it demands more than an
unadorned, 2 the-defendant-unlawfully-harmed-me accusation.

Ashcroft v. Iqbal, 556 U.S. 662, 677–78 (2009). 3 A pleading that offers only labels and
conclusions, or a formulaic recitation of the elements of a 4 cause of action, or naked assertions
devoid of further factual enhancement does not suffice. *Id.* 5 To state a claim under 42 U.S.C. §
1983, a plaintiff must allege two essential elements: (1) that a 6 right secured by the Constitution
or laws of the United States was violated, and (2) that the alleged 7 violation was committed by a
person acting under the color of state law.

See *West v. Atkins*, 487 8 U.S. 42, 48 (1988). 9 “The standard for determining whether a plaintiff
has failed to state a claim upon which 10 relief can be granted under § 1915(e)(2)(B)(ii) is the
same as the Federal Rule of Civil Procedure 11 12(b)(6) standard for failure to state a claim.”

Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 12 2012); see also Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir.

2012) (Section 1915A 13 screening “incorporates the familiar standard applied in the context of failure to state a claim 14 under Federal Rule of Civil Procedure 12(b)(6)”). In determining whether a complaint states a 15 claim, the court is “not... required to accept as true allegations that contradict exhibits attached to 16 the Complaint or matters properly subject to judicial notice, or allegations that are merely 17 conclusory, unwarranted deductions of fact, or unreasonable inferences.” Daniels-Hall v. Nat’l 18 Educ.

Ass’n, 629 F.3d 992, 998 (9th Cir. 2010). “Courts must consider the complaint in its 19 entirety,” including “documents incorporated into the complaint by reference,” when determining 20 whether the plaintiff has stated a claim upon which relief may be granted. See Tellabs, Inc. v. 21 Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007) (12(b)(6) motion); Schneider v. Cal. Dep’t 22 of Corrs., 151 F.3d 1194, 1197 n.1 (9th Cir.

1998) (12(b)(6) motion). “A copy of a written 23 instrument that is an exhibit to a pleading is a part of the pleading for all purposes.” Fed. R. Civ. 24 P. 10(c). 25 B. Procedural History 26 In the initial complaint, Plaintiff sued SQSP doctor Daniel Smith, chief psychiatrist Paul 27 Burton, psychologist Obrero, psychiatrist Emily Asher, and licensed clinical social workers 1 California’s Bane Act, and Cal. Gov’t Code § 845.6.

The initial complaint made the following 2 allegations. Plaintiff had been poisoned by custody staff while housed at California Institute for 3 Men. The poison burned a hole in his body, injuring his stomach and causing an ulcer. 4 Defendants conspired to cover up the injuries caused by the poisoning as follows. Defendant 5 Smith left Plaintiff on a medication-only treatment plan that was ineffective to address the damage 6 to Plaintiff’s stomach from the poisoning.

Defendant Smith refused to order an EGD and 7 colonoscopy and refused to summon a specialist. Defendants Burton, Obrero, Asher, Janik, and 8 Fitzgibbon diagnosed Plaintiff as suffering from paranoid delusions and tried to have Plaintiff 9 admitted into mental health. Plaintiff’s blood count was not taken despite his requests. 10 The Court dismissed the complaint for failure to state an Eighth Amendment claim for 11 deliberate indifference to serious medical needs as follows: 12 The complaint’s allegations, at most, allege a difference of opinion between as to the appropriate medical treatment which, as a matter of law, fails to state an Eighth 13 Amendment claim.

Plaintiff has been prescribed omeprazole and sucralfate, which is an appropriate treatment for ulcers. It is unclear why a blood count test, upper endoscopy 14 (EGD), and colonoscopy were the only appropriate medical treatment; or how the medication prescribed was ineffective. Plaintiff acknowledges in the complaint that when 15 he was later given a blood count test, while the test

indicated a low blood count, the low blood count was attributed to anemia, not poisoning or internal bleeding.

Plaintiff's 16 conclusory statements that he required a blood count test, upper endoscopy (EGD), and colonoscopy and that medication was ineffective are naked assertions devoid of further 17 factual enhancement insufficient to state a cognizable Eighth Amendment claim. *Ashcroft*, 556 U.S. at 677–78. 18 In addition, the complaint's allegations do not satisfy the objective prong of an Eighth Amendment claim.

According to the complaint, defendant Smith informed Plaintiff 19 that his stomach issues would resolve in six weeks, and did not believe that Plaintiff had been poisoned. It therefore cannot be reasonably inferred from the complaint that defendant 20 Smith knew that denying Plaintiff a blood count test, upper endoscopy (EGD), and colonoscopy subjected him to substantial risk of serious harm, which is a required element 21 of an Eighth Amendment claim.

Farmer, 511 U.S. at 837. Similarly, the complaint does not provide factual allegations from which it can be reasonably inferred that defendants 22 Burton, Obrero, Asher, Janik, and Fitzgibbon failed to recommend a blood count test, upper endoscopy (EGD), and colonoscopy, knowing that not receiving these tests would 23 expose Plaintiff to substantial risk of serious harm.

To the extent that Plaintiff is alleging that Defendants should have known that 24 poisoning required additional medical examination, such as a blood count test, upper endoscopy (EGD), and colonoscopy, the Court notes the following.

First, the Court need 25 not accept as true irrational allegations, such as Plaintiff's unsupported claim that he was poisoned. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992) (because 28 U.S.C. § 1915 gives 26 courts authority to pierce veil of complaint's factual allegations, court is not bound to accept on screening irrational or wholly incredible allegations as true).

Second, medical 27 malpractice or negligence does not violate the Eighth Amendment. *Toguchi*, 391 F.3d. at 1 Dkt. No. 5 at 3-4. The Court granted Plaintiff leave to amend to correct the identified deficiencies. 2 See generally Dkt. No. 5. 3 On October 20, 2025, Plaintiff filed an amended complaint. Dt. No. 9.

On October 23, 4 2025, Plaintiff filed a second amended complaint. An amended complaint completely replaces 5 previous complaints. See *Lacey v. Maricopa Cty.*, 693 F.3d 896, 925 (9th Cir. 2010). The second 6 amended complaint is therefore the operative complaint. 7 C. Second Amended Complaint 8 The second amended complaint names as defendants San Quentin State Prison ("SQSP") 9 doctor Daniel Smith and Doe SQSP correctional officer.

10 The factual allegations in the second amended complaint are similar to the factual 11 allegations made in the initial complaint. 12 Plaintiff was housed at California Institute for Men

(“CIM”) prior to being housed at 13 SQSP. While housed at CIM, Plaintiff was poisoned and the poison caused an ulcer.

On October 14 2, 2023, Plaintiff sought treatment from defendant Smith for the ulcer. Defendant Smith 15 responded did not believe that Plaintiff had an ulcer, in part because Plaintiff was already being 16 provided treatment for an ulcer: 40 mg omeprazole twice daily and sucralfate. Defendant Smith 17 did not rule out the possibility of an ulcer, stating that there was a possibility of a duodenal ulcer.

18 Plaintiff states although that the omeprazole was prescribed to reduce the amount of acid in 19 Plaintiff’s stomach so Plaintiff’s ulcer could heal and the sucralfate was intended to stop the 20 bleeding, neither medication was working. 21 On October 4, 2023, Plaintiff was admitted to SQSP’s Triage and Treatment Area for 22 severe abdominal pain.

The nurse who treated him “educated him to get an EGD and 23 colonoscopy” and Plaintiff agreed. Defendant Smith refused to order an EGD and colonoscopy 24 and refused to summon a specialist because he was conspiring with custody staff to cover up the 25 injuries sustained from the poisoning. Defendant Smith knew that an EGD would reveal 26 Plaintiff’s injuries, as indicated by the results of May 23, 2024 EGD.

Plaintiff was released from 27 the TTA on the same day. Shortly after his release, Plaintiff noticed that his stools were getting 1 for labs. The Doe defendant falsified a refusal of examination to prevent Plaintiff from getting his 2 blood count because the Doe defendant was trying to cover up the injuries covered by the 3 poisoning. Plaintiff was scheduled to have his blood count checked on November 20, 2023, but 4 was instead transferred away from SQSP to CMF-Vacaville.

On December 5, 2023, Plaintiff had 5 labs taken at CMF-Vacaville which indicated that he had a low blood count, which is an indication 6 of internal bleeding. On May 23, 2024, while housed at CMF – Vacaville, Plaintiff received an 7 EGD. Dr. Denigris performed the EGD and cauterized something during the procedure.

As a 8 result, after the EGD, Plaintiff felt a burning sensation when he ate. Dr. Denigris concluded that 9 the EGD showed that Plaintiff suffered from food allergies and eosinophilic esophagitis. 10 However, this conclusion was false and was made to “spoil[] the evidence.” The consulting 11 specialist did not endorse Dr. Denigris’ conclusion and instead stated that he highly doubted that 12 Plaintiff had eosinophilic esophagitis because Plaintiff had no symptoms of dysphagia and 13 because the biopsies were only taken from the distal esophagus which in the setting of GERD 14 frequently shows small degree of eosinophilia.

After the EGD, Plaintiff felt a burning sensation 15 when eating, which is further proof that defendant Smith’s medication-only treatment was 16 ineffective for the damage caused by the poisoning. 17 Defendants Smith and Doe violated Plaintiff’s constitutional rights when they

conspired to 18 cover up Plaintiff's injuries by defendant Smith refusing to order an EGD procedure and by 19 defendant Doe cancelling Plaintiff's lab appointments for a blood count.

These actions and 20 inactions also violated California's Bane Act because they constitute coercive acts. In addition, 21 defendant Smith's refusal to summon a specialist violated the legal duty to summon medical care 22 set forth in Cal. Gov't Code § 845.6. 23 D. Dismissal with Prejudice 24 The Court DISMISSES the second amended complaint for failure to state an Eighth 25 Amendment claim because it fails to correct the deficiencies identified in the Court's August 14, 26 2025 screening order.

27 A prison official is deliberately indifferent to an inmate's serious medical needs, in 1 harm and disregards that risk by failing to take reasonable steps to abate it. *Farmer v. Brennan*, 2 511 U.S. 825, 837 (1994).

The prison official must not only "be aware of facts from which the 3 inference could be drawn that a substantial risk of serious harm exists," but he "must also draw the 4 inference." *Id.* "A difference of opinion between a prisoner-patient and prison medical authorities 5 regarding treatment does not give rise to a § 1983 claim." *Franklin v. Oregon*, 662 F.2d 1337, 6 1344 (9th Cir.

1981). Similarly, a showing of nothing more than a difference of medical opinion 7 as to the need to pursue one course of treatment over another is insufficient, as a matter of law, to 8 establish deliberate indifference. *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004). A 9 claim of medical malpractice or negligence is insufficient to make out a violation of the Eighth 10 Amendment.

Toguchi, 391 F.3d. at 1060. 11 As an initial matter, the Court need not accept as true irrational allegations, such as 12 Plaintiff's unsupported claims that he was poisoned, that prison officials were conspiring to cover 13 up his poisoning, or that doctors falsified his medical reports. *Denton v. Hernandez*, 504 U.S. 25, 14 32 (1992) (because 28 U.S.C. § 1915 gives courts authority to pierce veil of complaint's factual 15 allegations, court is not bound to accept as true irrational or wholly incredible allegations).

16 The amended complaint again fails to satisfy the objective prong of an Eighth Amendment 17 claim. There are no factual allegations from which it can be reasonably inferred that defendant 18 Smith knew of a significant risk of substantial harm to Plaintiff if Plaintiff did not receive an EGD 19 and colonoscopy. According to the operative complaint and exhibits attached thereto, defendant 20 Smith believed that Plaintiff's stomach issues were adequately addressed by omeprazole and 21 sucralfate; that Plaintiff's stomach issues were caused by paranoia; that Plaintiff required mental 22 health treatment; that an EGD and colonoscopy were not appropriate for Plaintiff's health issues; 23 and that medical staff should not agree to treatment that might undermine the

mental health 24 approach, i.e., allow him to avoid food because of the belief that the food was poisoned.

Dkt. No. 25 10 at 13, 16. Moreover, the exhibits to the operative complaint, specifically the August 2024 EGD 26 and colonoscopy report, contradict Plaintiff's claims of an ulcer. The EGD and colonoscopy were 27 negative, meaning that no ulcer was found. Dkt. No. 10 at 30.

In addition, the report contradicts 1 was ineffective to treat his condition. The doctor reading the results from the EGD and 2 colonoscopy concluded that Plaintiff had GERD due to obesity and possibly had functional 3 heartburn.

The doctor's suggested plan was to continue the medication-only treatment prescribed 4 by defendant Smith, perform a small bowel capsule endoscopy to evaluate small-bowel obscure 5 bleeding, and encourage Plaintiff to lose weight. Dkt. No. 10 at 30.

To the extent that defendant 6 Smith erred in his diagnosis and medical treatment plan, medical malpractice or negligence does 7 not violate the Eighth Amendment. *Toguchi*, 391 F.3d. at 1060. 8 The second amended complaint's allegations again allege, at most, a difference of opinion 9 between Plaintiff and defendant Smith as to the appropriate medical treatment which, as a matter 10 of law, fails to state an Eighth Amendment claim.

The Court DISMISSES the Eighth Amendment 11 claim against defendant Smith without further leave to amend, because Plaintiff was previously 12 granted leave to amend this claim and has been unable to cure the identified deficiency. See, e.g., 13 *Simon v. Value Behavioral Health, Inc.*, 208 F.3d 1073, 1084 (9th Cir. 2000) (affirming dismissal 14 without leave to amend where plaintiff failed to correct deficiencies in complaint, where court had 15 afforded plaintiff opportunities to do so and had discussed substantive problems with claims), 16 amended by 234 F.3d 428, overruled on other grounds by *Odom v. Microsoft Corp.*, 486 F.3d 541, 17 551 (9th Cir.

2007); *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) 18 (district court may deny leave to amend where there have been repeated failures to cure 19 deficiencies by amendment). 20 The Court DISMISSES the Eighth Amendment claim based on the allegation that the Doe 21 defendant falsified a refusal to prevent from having labs that would check his blood count.

This 22 claim is speculative and conclusory. This claim relies on the allegation that a blood count would 23 reveal that Plaintiff had an ulcer that was causing internal bleeding. This allegation is contradicted 24 by the medical records that Plaintiff has included with the operative complaint. And these are no 25 factual allegations from which the Court can reasonably conclude that the Doe defendant knew of, 26 and disregarded, a substantial risk of serious harm to Plaintiff when he or she allegedly prevented 27 Plaintiff from having his blood counted.

Finally, this action may not proceed against a Doe 1 Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980), in part because it is effectively impossible 2 || for the United States Marshal to serve an anonymous defendant.

The Court DISMISSES the 3 || Eighth Amendment claim against the Doe defendant without leave to amend as it is based on the 4 same irrational allegation that the Court has rejected above. 5 Plaintiff has not stated a cognizable federal claim. All that remains in this action are 6 Plaintiff's state-law claims. See 28 U.S.C. § 1367(a).

The Court declines to screen these potential 7 state law claims because the Court has dismissed all claims over which it has original jurisdiction. 8 See Sanford v. MemberWorks, Inc., 625 F.3d 550, 561 (9th Cir. 2010) (citing 28 U.S.C. § 9 1367(c)(3)) (citation omitted) (original brackets) (“[I]n the usual case in which all federal-law 10 claims are eliminated before trial, the balance of factors to be considered under the pendent 11 || jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward 12 || declining to exercise jurisdiction over the remaining state-law claims.”).

13 CONCLUSION 14 For the reasons set forth above, the Court DISMISSES the second amended complaint 3 15 without leave to amend. Judgment is entered in favor of Defendants and against Plaintiff. The a 16 || Clerk shall close the case. IT IS SO ORDERED. || Dated: 10/30/2025 HAYWOOD S. GILLIAM, JR. 20 United States District Judge 21 22 23 24 25 26 27 28