

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**Edgar Plascencia v. Samuel Ko, Doctor; Chirag Bhavsar, Doctor;
Kyle Seeley, RN; Christina Betacourt, LVN**

Plascencia · No. 3:23-cv-895-RSH-SBC · Decided December 17, 2025

SUMMARY

The United States District Court for the Southern District of California denied Edgar Plascencia’s motion seeking equitable tolling or relief from the dismissal of his civil rights action. The court held that any motion construed under Federal Rule of Civil Procedure 60 was untimely and declined to issue an advisory opinion on whether a future action would be barred by the statute of limitations.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 EDGAR PLASCENCIA, Case No.: 3:23-cv-895-RSH-SBC CDCR #BG-
9161, 12 ORDER DENYING PLAINTIFF’S 13 MOTION FOR RELIEF FROM Plaintiff,
JUDGMENT 14 v. 15 [ECF No. 12] 16 SAMUEL KO, Doctor; CHIRAG BHAVSAR, Doctor;
KYLE SEELEY, RN; 17 CHRISTINA BETACOURT, LVN, 18 Defendants. 19 20 21 On May 15,
2023, plaintiff Edgar Plascencia, proceeding pro se, filed a civil rights 22 Complaint pursuant to
42 U.S.C. § 1983 (ECF No. 1), together with a motion to proceed 23 in forma pauperis (“IFP”)
(ECF No. 2).

Plaintiff alleged that medical officials at Centinela 24 State Prison violated his Eighth and
Fourteenth Amendment rights by failing to provide 25 adequate post-operative care or assign him
to a lower bunk after doctors at Alvarado 26 Hospital performed arthroscopic surgery on his left
knee on May 23, 2022. ECF No. 1 at 27 9–11. 28 /// 1 On August 7, 2023, the Court granted
Plaintiff’s motion for leave to proceed IFP, 2 and assessed an initial partial filing fee to be
collected only if sufficient funds existed in 3 Plaintiff’s inmate account.

ECF No. 5 at 3. In the same order, the Court dismissed the 4 Complaint for failure to state a
plausible claim for relief. Id. at 6–13. The Court granted 5 Plaintiff leave to file an amended
pleading within 45 days of the order. Id. at 14. Thereafter, 6 at Plaintiff’s request, the Court
granted Plaintiff a further extension until October 18, 2023 7 to file an amended pleading.

ECF Nos. 6; 7. 8 On October 19, 2023, Plaintiff filed a notice of voluntary dismissal. ECF No. 8.
9 Plaintiff stated that he was seeking dismissal to avoid the filing fee, and also stated that he 10
lacked the skills and resources to pursue his claim. Id. at 1–2.

On October 26, 2023, the 11 Court entered an order of dismissal without prejudice. ECF No. 9. 12 On September 29, 2025, Plaintiff filed a “motion for equitable tolling [of] the statute 13 of limitations to re-file Plaintiff’s claim under 42 U.S.C. § 1983.” ECF No. 12. Plaintiff’s 14 motion states that he did not timely file an amended pleading “due to medical issues and 15 the impact of the disadvantages of incarceration.” Id. at 1.

The motion also refers to a 16 consultation that Plaintiff had with two specialists on June 12, 2025. Id. at 1–2. 17 To the extent Plaintiff’s motion is construed as a motion seeking relief from 18 judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure, such a motion is not 19 timely. See Fed. R. Civ. P. 60(c)(1) (providing that a motion under Rule 60(b) “must be 20 made within a reasonable time,” and must be made within one year of entry of judgment 21 where the motion is based on “mistake, inadvertence, surprise, or excusable neglect” or 22 “newly discovered evidence”).

Plaintiff brings the motion almost two years after he 23 voluntarily dismissed his case. To the extent Plaintiff is seeking a ruling on whether, in the 24 event Plaintiff files a new lawsuit, such a lawsuit would be time-barred, the Court, 25 respectfully, cannot provide an advisory opinion in that regard. See *Partington v. Gedan*, 26 961 F.2d 852, 862 (9th Cir.

1992) (“At this stage, any ruling from a federal district court 27 would be an advisory opinion, something federal courts cannot give.”). 28 I For the foregoing reasons, Plaintiffs motion [ECF No. 12] is DENIED. 2 IT IS SO ORDERED. 3 || Dated: December 17, 2025 □ 4 fekut ¢ Howe 5 Hon. Robert S. Huie United States District Judge 6 7 8 9 10 11] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28