

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

In re CIM-SQ Transfer Cases

No. 5:20-cv-06326-EJD (N.D. Cal. May 22, 2025) · No. 5:20-cv-06326-EJD · Decided May 22, 2025

OPINION

IN RE CIM-SQ TRANSFER CASES

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 SAN JOSE DIVISION

7 8 9 IN RE CIM-SQ TRANSFER CASES Case No. 5:20-cv-06326-EJD 10

ORDER OF SERVICE

This Document Relates To: 11 25-cv-00954; Young v. Moralez 12 13

14 INTRODUCTION

15 Plaintiff, a California prisoner, filed a letter with the Court which the Court construed as an 16 attempt to file a pro se civil rights action. Dkt. No. 1. Plaintiff subsequently filed a complaint. 17 Dkt. No. 7. Plaintiff alleges that defendants violated his constitutional rights by transferring 18 inmates, some of whom were infected with COVID-19, from the California Institution for Men 19 (CIM) to San Quentin State Prison (SQSP)¹ in May 2020. The case is now before the Court for 20 screening pursuant to 28 U.S.C. § 1915A(a), and service of the complaint on some defendants is 21 ordered. Plaintiff will be granted leave to proceed in forma pauperis by separate order. 22 This case has been consolidated with cases in this district related to the 2020 prisoner 23 transfer and related to the first case filed, No. 5:20-cv-06326-EJD, which now has the caption “In 24 Re CIM-SQ Transfer Cases.” Pro se prisoner cases that are part of the consolidated matter are 25 stayed except for the purposes of service. Service shall therefore proceed in plaintiff’s case as 26 ordered below, but the case will remain stayed for all other purposes. The docket for Case No. 25- 27 1 cv-00954 and all other individual dockets have been closed. If plaintiff wishes to file any 2 motions, he must file them in Case No. 5:20-cv-06326-EJD and include his original case number, 3 No. 25-cv-00954, on the left side of the heading.

4 STANDARD OF REVIEW

5 Federal courts must engage in a preliminary screening of cases in which prisoners seek 6 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 7 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of 8 the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief

9 may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” Id. 10 § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). 12 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the 13 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon 14 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to 15 state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to 16 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a 17 formulaic recitation of the elements of a cause of action will not do Factual allegations must 18 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 19 127 S. Ct. 1555, 1564-65 (2007) (citations omitted). A complaint must proffer “enough facts to 20 state a claim for relief that is plausible on its face.” Id. at 1564. 21 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a 22 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged 23 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 24 42, 48 (1988). 25 If a court dismisses a complaint for failure to state a claim, it should “freely give 26 leave” to amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). A court has discretion to 27 deny leave to amend due to “undue delay, bad faith or dilatory motive on the part of the movant, 1 repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the 2 opposing party by virtue of allowance of the amendment, [and] futility of amendment.” 3 *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008).

4 LEGAL CLAIMS

5 Plaintiff’s letter stated as follows: he wished to be accepted into the class action for 6 COVID-19 afflicted inmates at SQSP. He was “infected by the improper measures used by 7 CDCR staff at SQSP while housed in the institutions west block . . . due solely to transfer of the 8 122 infected inmates from [CIM] without concern for those non-positive inmates confined in the 9 receiving institution.” His complaint names the following defendants: 10 1. Raul Moralez 11 2. Ralph Diaz 12 3. K. Allison 13 4. Dr. Cook PCP 14 Plaintiff alleges he was housed in West Block Cell 2-26 in 2020 when people with COVID 15 were brought to his housing area. He tested negative for COVID in May of 2020 and was 16 requesting to be moved because of high-risk medical needs. He contracted COVID on July 20, 17 2020. He seeks damages for violation of his Eighth Amendment rights. 18 Liberally construed, plaintiff’s allegations state a plausible claim for deliberate 19 indifference to plaintiff’s safety, in violation of the Eighth Amendment, against former CDCR 20 secretaries Ralph Diaz and K. Allison. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). 21 As plaintiff makes no claims about defendants Moralez or Dr. Cook, nor any claims 22 regarding his treatment at the Substance Abuse Treatment Facility where he is currently housed, 23 nor about his medical care, those defendants are dismissed.

24 CONCLUSION

25 1. Defendants Moralaz and Cook are dismissed. 26 2. Plaintiff's ex parte motion to present COVID 19 results to the Court (Dkt. No. 250 27 in 20-cv-06326-EJD) is denied because plaintiff does not need to present any evidence to the 1 3. The Court orders that service on the following defendants shall proceed under the 2 California Department of Corrections and Rehabilitation's ("CDCR") e-service program for civil 3 rights cases from prisoners in the CDCR's custody: 4 a) Ralph Diaz 5 b) K. Allison 6 In accordance with the program, the clerk is directed to serve on the CDCR via email the 7 following documents: the operative complaint (Dkt. No. 7 in 25-cv-00954-EJD), this Order of 8 Service, a CDCR Report of E-Service Waiver form, and a summons. The clerk also shall serve a 9 copy of this order on the plaintiff. 10 No later than 40 days after service of this order via email on the CDCR, the CDCR shall 11 provide the court a completed CDCR Report of E-Service Waiver advising the court which 12 defendant(s) listed in this order will be waiving service of process without the need for service by 13 the USMS and which defendant(s) decline to waive service or could not be reached. The CDCR 14 also shall provide a copy of the CDCR Report of E-Service Waiver to the California Attorney 15 General's Office which, within 21 days, shall file with the Court a waiver of service of process for 16 the defendant(s) who are waiving service. 17 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for each 18 defendant who has not waived service according to the CDCR Report of E-Service Waiver a 19 USM-285 Form. The clerk shall provide to the USMS the completed USM-285 forms and copies 20 of this order, the summons and the operative complaint for service upon each defendant who has 21 not waived service. The clerk also shall provide to the USMS a copy of the CDCR Report of E- 22 Service Waiver. 23 4. All defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure 24 requires them to cooperate in saving unnecessary costs of service of the summons and complaint. 25 Pursuant to Rule 4, if defendants, after being notified of this action and asked by the Court, on 26 behalf of plaintiff, to waive service of the summons, fail to do so, they will be required to bear the 27 cost of such service unless good cause can be shown for their failure to sign and return the waiver] 5. All communications by plaintiff with the Court must be served on defendants' 2 || counsel by mailing a true copy of the document to defendants' counsel. The Court may disregard 3 any document which a party files but fails to send a copy of to his opponent. Until defendants' 4 || counsel has been designated, plaintiff may mail a true copy of the document directly to 5 defendants, but once defendants are represented by counsel, all documents must be mailed to 6 || counsel rather than directly to defendants. 7 6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the 8 Court informed of any change of address and must comply with the Court's orders in a timely 9 || fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant 10 || to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every 11 pending case every time he is moved to a new facility. 12 7. Any motion for an extension of time must be filed no later than the deadline sought 13 || to be extended and must be

accompanied by a showing of good cause. Plaintiff is cautioned that 14 || he must include the case name and case number for this case on any document he submits to the 3 15 Court for consideration in this case. a 16 8. The case will remain stayed for all purposes other than service of the complaint on 2 17 || defendants. Z 18 9. This Order terminates Dkt. No. 250 in 20-cv-06326-EJD. 19 IT ISSO ORDERED. 20 || Dated: May 22, 2025 21 22

EDWARD J. DAVILA

23 United States District Judge 24 25 26 27 28