

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Lemelle v. Nguyen

Lemelle · No. 25-cv-02166 BLF (PR) · Decided July 24, 2025

OPINION

Lemelle v. Nguyen

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10

MICHAEL S. LEMELLE,

11 Case No. 25-cv-02166 BLF (PR) Plaintiff,

12 AMENDED ORDER OF PARTIAL

DISMISSAL AND OF SERVICE;

13 v. DIRECTING DEFENDANTS TO

FILE DISPOSITIVE MOTION OR

14 DR. NGUYEN, et al., NOTICE REGARDING SUCH

MOTION; INSTRUCTIONS TO

15 Defendants. CLERK 16 17 18 Plaintiff, a state inmate, filed the instant pro se civil rights action
pursuant to 42 19 U.S.C. § 1983 against staff at Salinas Valley State Prison (“SVSP”) where he is
currently 20 incarcerated. Dkt. No. 1. Plaintiff’s motion for leave to proceed in forma pauperis
will be 21 addressed in a separate order. 22

23 DISCUSSION

24 A. Standard of Review 25 A federal court must conduct a preliminary screening in any case in
which a 26 prisoner seeks redress from a governmental entity or officer or employee of a 27
governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any 1 upon
which relief may be granted or seek monetary relief from a defendant who is immune 2 from such
relief. See id. § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally 3 construed. See
Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988). 4 To state a claim under 42
U.S.C. § 1983, a plaintiff must allege two essential 5 elements: (1) that a right secured by the
Constitution or laws of the United States was 6 violated, and (2) that the alleged violation was
committed by a person acting under the 7 color of state law. See West v. Atkins, 487 U.S. 42, 48
(1988). 8 B. Plaintiff’s Claims 9 Plaintiff claims that in August 2022, he suffered a torn rotator
cuff in his right 10 shoulder. Dkt. No. 1 at 4. He experienced severe pain and limited mobility and

filed 11 medical grievances seeking treatment, including an MRI. Id. From April 2023 through 12 December 2024, Plaintiff sought treatment for the injury but experienced delays and 13 denials; he eventually experienced trouble with his left shoulder as well. Id. at 4-10. He 14 spoke with Defendants Nurse Thorne, Nurse Ortiz, and Sgt. Selby on separate occasions, 15 and he alleges they played “gatekeeper” in preventing him from seeing his PCP (primary 16 care provider). Id. at 11. Plaintiff also claims Defendant Dr. Nguyen, his PCP, acted with 17 deliberate indifference to his serious medical needs when he repeatedly refused to see and 18 examine Plaintiff, as well as delaying and denying treatment. Id. Plaintiff claims 19 Defendant Scott Langevine, the Chief Medical Officer at SVSP, acted with deliberate 20 indifference when he failed to respond reasonably to Plaintiff’s complaints of being denied 21 medical care. Id. at 12. Plaintiff alleges that due to Defendants’ actions, he suffered pain, 22 discomfort, trouble sleeping, lack of mobility and possibly lifelong handicap. Id. These 23 allegations are sufficient to state an Eighth Amendment claim for deliberate indifference to 24 serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *McGuckin v. Smith*, 25 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, *WMX Technologies, Inc. 26 v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). 1 when Defendant Ortiz showed Sgt. Selby his medical records without his permission and 2 conspired to lie to Plaintiff in an attempt to make him leave his medical appointment 3 without an examination. Dkt. No. 1 at 12. However, these allegations, even if true, do not 4 state an Eighth Amendment claim for deliberate indifference. With regard to the 5 disclosure of his medical records, Plaintiff appears to be asserting a violation of the Health 6 Insurance Portability and Accountability Act (HIPPA). However, HIPPA does not provide 7 a private right of action. *Webb v. Smart Document Sols., LLC*, 499 F.3d 1078, 1081 (9th 8 Cir. 2007). A prisoner therefore has no private cause of action under HIPPA. *Seaton v. 9 Mayberg*, 610 F.3d 530, 533 (9th Cir. 2010). Nor does a prisoner have a “constitutionally 10 protected expectation of privacy in prison treatment records when the state has a legitimate 11 interest in access to them.” Id. at 534. Lastly, conspiracy is not itself a constitutional tort 12 under 42 U.S.C. § 1983. *Lacey v. Maricopa County*, 693 F.3d 896, 935 (9th Cir. 2012) (en 13 banc). As such, Plaintiff cannot state a separate Eighth Amendment claim against 14 Defendants Ortiz and Selby based on a conspiracy. Accordingly, leave to amend shall not 15 be granted with respect to these claims because it is not factually possible for Plaintiff to 16 cure these deficiencies. *Schmier v. United States Court of Appeals*, 279 F.3d 817, 824 (9th 17 Cir. 2002)

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19 CONCLUSION

20 For the foregoing reasons, the Court orders as follows: 21 1. This action shall proceed on the Eighth Amendment deliberate indifference 22 to serious medical needs claims against Defendants Dr. Nguyen, CME Scott Langevine, 23 Nurse Thorne, Nurse Ortiz, and Sgt. Selby. All other claims are DISMISSED with 24 prejudice for failure to state a claim. 25 2. The following

defendants shall be served at Salinas Valley State Prison: 26 a. Dr. Nguyen 1 c. Nurse Thorne 2 d. Nurse Ortiz 3 e. Sgt. Selby 4 Service on the listed defendant(s) shall proceed under the California Department of 5 Corrections and Rehabilitation's (CDCR) e-service program for civil rights cases from 6 prisoners in CDCR custody. In accordance with the program, the clerk is directed to serve 7 on CDCR via email the following documents: the operative complaint and any attachments 8 thereto, Dkt. No. 1, this order of service, and a CDCR Report of E-Service Waiver form. 9 The clerk also shall serve a copy of this order on the plaintiff. 10 No later than 40 days after service of this order via email on CDCR, 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 13 service by the United States Marshal Service (USMS) and which defendant(s) decline to 14 waive service or could not be reached. CDCR also shall provide a copy of the CDCR 15 Report of E-Service Waiver to the California Attorney General's Office which, within 21 16 days, shall file with the court a waiver of service of process for the defendant(s) who are 17 waiving service. 18 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for 19 each defendant who has not waived service according to the CDCR Report of E-Service 20 Waiver a USM-285 Form. The clerk shall provide to the USMS the completed USM-285 21 forms and copies of this order, the summons and the operative complaint for service upon 22 each defendant who has not waived service. The clerk also shall provide to the USMS a 23 copy of the CDCR Report of E-Service Waiver. 24 3. No later than ninety-one (91) days from the date this order is filed, 25 Defendants shall file a motion for summary judgment or other dispositive motion with 26 respect to the claims in the complaint found to be cognizable above. 1 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of 2 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor 3 qualified immunity found, if material facts are in dispute. If any Defendant is of the 4 opinion that this case cannot be resolved by summary judgment, he shall so inform the 5 Court prior to the date the summary judgment motion is due. 6 b. In the event Defendants file a motion for summary judgment, the 7 Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate 8 warnings under *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See 9 *Woods v. Carey*, 684 F.3d 934, 940 (9th Cir. 2012). 10 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court 11 and served on Defendants no later than twenty-eight (28) days from the date Defendants' 12 motion is filed. 13 Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and 14 *Celotex Corp. v. Catrett*, 47 U.S. 317 (1986) (holding party opposing summary judgment 15 must come forward with evidence showing triable issues of material fact on every essential 16 element of his claim). Plaintiff is cautioned that failure to file an opposition to 17 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to 18 the granting of the motion, and granting of judgment against Plaintiff without a trial. See 19 *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); *Brydges v. Lewis*, 18 20 F.3d 651, 653 (9th Cir. 1994). 21 5. Defendants shall file a reply brief no later than fourteen

(14) days after 22 Plaintiff's opposition is filed. 23 6. The motion shall be deemed submitted as of the date the reply brief is due. 24 No hearing will be held on the motion unless the Court so orders at a later date. 25 7. All communications by the Plaintiff with the Court must be served on 26 Defendants, or Defendants' counsel once counsel has been designated, by mailing a true 1 8. Discovery may be taken in accordance with the Federal Rules of Civil 2 || Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local 3 || Rule 16-1 is required before the parties may conduct discovery. 4 9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the 5 || court informed of any change of address and must comply with the court's orders in a 6 || timely fashion. Failure to do so may result in the dismissal of this action for failure to 7 || prosecute pursuant to Federal Rule of Civil Procedure 41(b). 8 10. Extensions of time must be filed no later than the deadline sought to be g || extended and must be accompanied by a showing of good cause. 10 IT IS SO ORDERED. 11 |) Dated: _ July 24, 2025 Louinfhccnan BETH LABSON FREEMAN United States District Judge 23 15 16 17 Oo Z 18 19 20 21 22 23 24 25 Order of Partial Dism & Service PRO-SE\BLF\CR.25\02166LeMelle_sve 26 27