

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

**Diana Akins, as successor in interest to Samuel Wynn, Jr. v. B. Moss,
et al.**

Akins v. Moss · No. 2:21-CV-1317-KJM-DMC-P · Decided September 23, 2025

OPINION

Moss

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 DIANA AKINS, as successor in interest to No. 2:21-CV-1317-KJM-DMC-P

SAMUEL WYNN, JR.,

12 Plaintiff,

13 FINDINGS AND RECOMMENDATIONS

v. 14 B.MOSS, et al., 15 Defendants. 16 17 18 Plaintiff, as successor-in-interest for deceased inmate Samuel Wynn, who is 19 proceeding with retained counsel, brings this civil rights action under 42 U.S.C. § 1983. Pending 20 before the Court are: (1) Defendants’ motion for judgment on the pleadings, ECF No. 63; and (2) 21 Plaintiff’s motion for leave to amend, ECF No. 64. The parties appeared before the undersigned 22 for a hearing on both motions via Zoom on September 10, 2025, at 10:00 a.m. Zachary Linowitz, 23 Esq., appeared for Plaintiff. Jennifer Burns, Esq., appeared for Defendants. After hearing the 24 parties’ arguments, the matters were submitted. 25 /
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1 I. BACKGROUND

2 A. Plaintiff’s Allegations 3 This action proceeds on Mr. Wynn’s pro se complaint. See ECF No. 1. The 4 complaint names the following as defendants: (1) B. Moss, a Correctional Officer at high Desert 5 State Prison (HDSP); (2) L. Mundy, a Correctional Officer at HDSP; and (3) J. Pickett, the Chief 6 Deputy Warden at HDSP. See id. at 3. 7 In his first claim, Mr. Wynn alleged that, on February 21, 2021, he saw Defendant 8 Moss removed his face mask and “spit a glob of chewing tobacco spit into a garbage can filled 9 with I/M [inmate] lunches.” Id. According to Mr. Wynn, Defendant Mundy witnessed this and 10 still proceeded to hand out the lunches, giving one of them to Mr. Wynn. See id. Mr. Wynn 11 alleged that, despite his complaints about potential contamination, Defendant Mundy continued 12 passing out the inmate lunches. See id. at 3-4. Mr. Wynn stated that, a short time later, Defendant 13 Mundy “came back and handed me and my cellie two more lunches and said, ‘Don’t shoot the 14 messenger.’” Id. at 4. Mr. Wynn stated that

Mundy also said: “I wouldn’t have did no jackass shit 15 like that.” Id. Mr. Wynn claimed that, as a result of the foregoing, he remained in fear of eating 16 any food at the prison. See id. 17 In his second claim, Mr. Wynn stated he submitted a grievance on March 2, 2021, 18 regarding the conduct of Defendants Moss and Mundy. See id. According to Mr. Wynn, the 19 grievance was processed by Defendant Pickett who allegedly “elected to disregard the 20 overwhelming amount of evidence against Defendants B. Moss and L. Mundy and instead chose 21 to attempt to cover-up the malicious acts of abovementioned Defendants by disapproving the 22 Plaintiff’s appeal.” Id. 23 B. Procedural History 24 On August 25, 2021, the Court issued an order addressing the sufficiency of the 25 original complaint. See ECF No. 25. In that order, the Court determined that Mr. Wynn had 26 stated a plausible claim for relief under the Eighth Amendment against Defendants Moss and 27 Mundy arising from the events of February 2, 2021. See id. The Court provided Mr. Wynn an 28 opportunity to amend in order to address deficiencies as to his claim against Defendant Pickett 1 arising from processing of Mr. Wynn’s grievance. See id. After Mr. Wynn failed to file a first 2 amended complaint within the time provided, the Court issued an order directing service of the 3 original complaint on Defendants Moss and Mundy as to the Eighth Amendment claim, see ECF

4 No. 13, and findings and recommendations for dismissal of Defendant Pickett as to Plaintiff’s 5 claims regarding processing of his grievance, see ECF No. 16. The findings and 6 recommendations were adopted in full by the District Judge on December 16, 2021, and 7 Defendant Pickett has been dismissed. See ECF No. 22. 8 Defendants Moss and Mundy filed their answer to Plaintiff’s remaining Eighth 9 Amendment claim on June 13, 2022. See ECF No. 29. On June 23, 2022, the Court issued a 10 discovery and scheduling order, setting a discovery cut-off date of January 23, 2023. See ECF

11 No. 30. On June 6, 2023, the discovery cut-off deadline was extended to September 1, 2023. See

12 ECF No. 39. On January 22, 2024 – after the close of discovery – Defendants filed a notice of 13 suggestion of death of Mr. Wynn. See ECF No. 44. On March 4, 2024, the current Plaintiff – 14 Ms. Akins, who is Mr. Wynn’s sister – sought substitution as successor-in-interest to Mr. Wynn. 15 See ECF No. 46. On August 26, 2024, the Court stayed proceeding pending resolution of Ms. 16 Akins’ motion to substitute. See ECF No. 51. Ms. Akins filed a renewed motion to substitute on

17 January 8, 2025, see ECF No. 54, and Defendants filed a notice of non-opposition on January 28,

18 2025, see ECF No. 57. On June 24, 2025, the Court granted the unopposed renewed motion to 19 substitute and lifted the stay of proceedings. See ECF No. 62. The Court extended the discovery 20 cut-off date to September 1, 2025, and ordered dispositive motions to be filed within 90 days 21 thereafter. See id. 22

23 II. DISCUSSION

24 In their motion for judgment on the pleadings, Defendants argue that Mr. Wynn's 25 allegation of a one-time contamination of his food cannot sustain a conditions-of-confinement 26 claim under the Eighth Amendment. See ECF No. 63. In her motion for leave to amend, Plaintiff 27 argues that she should be permitted to amend the original pro se complaint to add new claims for 28 retaliation, unlawful seizure of property, and violation of the Americans with Disabilities Act 1 (ADA). See ECF No. 64. Plaintiff has submitted a proposed first amended complaint. See ECF 2 No. 64-1. Because an amended complaint would render Defendants' motion moot, Plaintiff's 3 motion for leave to amend is discussed first. 4 A. Leave to Amend 5 The Federal Rules of Civil Procedure provide that a party may amend his or her 6 pleading once as a matter of course within 21 days of serving the pleading or, if the pleading is 7 one to which a responsive pleading is required, within 21 days after service of the responsive 8 pleading, see Fed. R. Civ. P. 15(a)(1)(A), or within 21 days after service of a motion under Rule 9 12(b), (e), or (f) of the rules, whichever time is earlier, see Fed. R. Civ. P. 15(a)(1)(B). In all 10 other situations, a party's pleadings may only be amended upon leave of court or stipulation of all 11 the parties. See Fed. R. Civ. P. 15(a) (2). Under this Court's local rules, a motion for leave to 12 amend must be accompanied by a proposed amended complaint filed as an exhibit to the motion. 13 See E. Dist. Cal. Local Rule 137(c). 14 Where leave of court to amend is required and properly sought, the Court 15 considers the following factors: (1) whether there is a reasonable relationship between the original 16 and amended pleadings; (2) whether the grant of leave to amend is in the interest of judicial 17 economy and will promote the speedy resolution of the entire controversy; (3) whether there was 18 a delay in seeking leave to amend; (4) whether the grant of leave to amend would delay a trial on 19 the merits of the original claim; and (5) whether the opposing party will be prejudiced by 20 amendment. See *Jackson v. Bank of Hawai'i*, 902 F.2d 1385, 1387 (9th Cir. 1990). Leave to 21 amend should be denied where the proposed amendment is frivolous. See *DCD Programs, Ltd. v. 22 Leighton*, 833 F.2d 183, 186 (9th Cir. 1987). 23 As reflected in the proposed first amended complaint at ECF No. 64-1, Plaintiff 24 Akins seeks to add the following new claims: (1) a retaliation claim against Defendant Mundy 25 and unnamed Doe defendants alleging that, shortly after the events at issue, Defendants retaliated 26 against Mr. Wynn for having filed an inmate grievance and this lawsuit relating to the 27 contaminated lunch; (2) an unlawful seizure claim under the Fourth Amendment against unnamed 28 Doe defendants arising from alleged withholding of Mr. Wynn's personal and legal materials 1 following his death; and (3) a claim against the California Department of Corrections and 2 Rehabilitation (CDCR) for violation of the ADA following Mr. Wynn's transfer from HDSP after 3 commencement of this litigation. See *id.* 4 In her motion for leave to amend, Plaintiff Akins argues amendment should be 5 permitted for the following reasons: (1) there has been no undue delay because she sought leave 6 to amend less than three weeks after the Court ordered substitution and only two weeks after 7 Defendants moved for judgment on the pleadings; (2) there is no prejudice to Defendants because 8 discovery is still open; and (3) amendment is not futile because the new claims are plausible. See 9 ECF No.

64, pgs. 3-5. These arguments are unpersuasive. 10 First and foremost, as to delay, Defendants are correct that a substituted party steps 11 into the same position as the original party. See *Hilao v. Estate of Marcus*, 103 F.3d 762, 766 12 (9th Cir. 1996). Thus, Ms. Akins diligence is measured from the time the original pro se 13 complaint was filed and not from the time she was permitted to substitute as Mr. Wynn's 14 successor-in-interest. Plaintiff has not demonstrated diligence since the action was commenced in 15 2021. Mr. Wynn would have known about the new retaliation and ADA claims long ago and did 16 not seek to amend.¹ 17 Additionally, the new claims sought to be added are either not cognizable or not 18 reasonably related to the original complaint. 19 1. Retaliation Claim 20 Ms. Akins seeks to add a new claim for retaliation. In the proposed first amended 21 complaint, Plaintiff alleges: 22 11. On March 2, 2021, Decedent filed a staff misconduct grievance regarding this incident [on February 21, 2021]. After the 23 grievance was filed, MUNDY developed a personal grudge against Decedent and repeatedly returned to his cell to harass him. MUNDY subjected 24 Decedent to escalating tension, hostility, and subtle threats, at one point telling him to "watch his back" and warning him about the "white devils," 25 referring to high-ranking prison officials. MUNDY also demanded that Decedent disclose what he had said during his interview with prison 26 investigators, further intimidating him. As a result, Decedent began to suffer clear consequences of retaliation, including fear, anxiety, and a sense of 27 28 1 As discussed below, the new proper deprivation claim is not cognizable. 1 pervasive threat to his safety. 2 * * * 3 15. After Decedent's claim was granted, he filed this civil rights action. After having been incarcerated at HDSP for approximately five years, 4 Defendants CDCR and DOES 1-25 promptly transferred Decedent to three different prisons within a relatively short period following the filing of his 5 lawsuit. The first of these transfers involved a grueling 14-hour bus ride to Calipatria State Prison, even though Defendants knew Calipatria is not a 6 CCCMS (Correctional Clinical Case Management System) facility, and therefore lacks the baseline level of outpatient mental health care required 7 under CDCR policy for inmates with particular psychiatric needs. Decedent, who had a documented psychiatric disability, was transferred there despite 8 this mismatch, further exacerbating his mental health deterioration and requiring another transfer just 10 days later. From Calipatria, Decedent was 9 sent to Salinas Valley State Prison in Soledad, and he was subsequently transferred once more to California Correctional Institution ("CCI") in 10 Tehachapi. These repeated transfers had a significant destabilizing impact on Decedent, exacerbating his mental deterioration, increasing his sense of 11 vulnerability and fear, and undermining any continuity of care or stability he had established. 12 ECF No. 64-1, pgs. 5, 6-7. 13 14 To state a claim under 42 U.S.C. § 1983 for retaliation, the plaintiff must establish 15 that he was retaliated against for exercising a constitutional right, and that the retaliatory action 16 was not related to a legitimate penological purpose, such as preserving institutional security. See 17 *Barnett v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam). In meeting this standard, 18 the prisoner must demonstrate a specific link between the alleged retaliation and the exercise of a 19 constitutional right. See *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995); *Valandingham v.*

20 Bojorquez, 866 F.2d 1135, 1138-39 (9th Cir. 1989). The prisoner must also show that the 21 exercise of First Amendment rights was chilled, though not necessarily silenced, by the alleged 22 retaliatory conduct. See *Resnick v. Hayes*, 213 F.3d 443, 449 (9th Cir. 2000), see also *Rhodes v.* 23 *Robinson*, 408 F.3d 559, 569 (9th Cir. 2005). Thus, the prisoner plaintiff must establish the 24 following in order to state a claim for retaliation: (1) prison officials took adverse action against 25 the inmate; (2) the adverse action was taken because the inmate engaged in protected conduct; (3) 26 the adverse action chilled the inmate's First Amendment rights; and (4) the adverse action did not 27 serve a legitimate penological purpose. See *Rhodes*, 408 F.3d at 568. 28 / / / 1 The new claim against Defendant Mundy is not reasonably related to the current 2 Eighth Amendment conditions-of-confinement claim because: (1) it is based on different facts; 3 and (2) it is based on different law. The new claim against unnamed Doe defendants is not 4 reasonably related to the current conditions-of-confinement claim for the same reasons. Further, 5 the claim against unnamed Doe defendants is not cognizable because Plaintiff has failed to allege 6 that the unnamed Doe defendants were aware that Mr. Wynn had filed a grievance or initiated 7 litigation. Given that Mr. Wynn is deceased and Ms. Akins was not present at the time, it is not 8 possible that Ms. Akins could allege a set of facts to cure these defects. 9 2. Seizure Claim 10 Plaintiff seeks to add a new claim against unnamed Doe defendants based on 11 seizure of Mr. Wynn's personal legal materials following his death. Plaintiff alleges as follows in 12 the proposed first amended complaint: 13 17. Following [Mr. Wynn's death], CDCR has failed to return to Plaintiff any of Decedent's personal property—including his pro se legal 14 paperwork and discovery materials—despite lawful requests. CDCR's retention of this property has unjustly prevented Plaintiff from completing an 15 accidental death insurance claim on behalf of Decedent. Furthermore, CDCR's retention of Decedent's legal and personal materials has impeded 16 Plaintiff's ability to effectively prosecute this case by depriving her of critical evidence and case documents. 17 ECF No. 64-1, pg. 7. 18 19 This claim is not cognizable. Where a prisoner alleges the deprivation of a 20 property interest caused by the random and unauthorized action of a prison official, there is no 21 claim cognizable under 42 U.S.C. § 1983 if the state provides an adequate post-deprivation 22 remedy. See *Zinermon v. Burch*, 494 U.S. 113, 129-32 (1990); *Hudson v. Palmer*, 468 U.S. 517, 23 533 (1984). A state's post-deprivation remedy may be adequate even though it does not provide 24 relief identical to that available under § 1983. See *Hudson*, 468 U.S. at 531 n.11. An available 25 state common law tort claim procedure to recover the value of property is an adequate remedy. 26 See *id.* at 128-29. Here, California provides remedies for deprivation of Plaintiff's property by 27 way of a tort claims process under state law. Moreover, prisoners have no Fourth Amendment 28 right to be free from seizures of their personal property. See *Hudson v. Palmer*, 468 U.S. 517, 1 536 (1984). 2 Finally, this new claim based on deprivation of property has no relationship to the 3 original conditions-of-confinement claim arising from events of February 21, 2021, because the 4 claims have no legal issues in common and arise from completely a different set of facts. 5 3. ADA Claim 6 Plaintiff brings this new claim for violation

of the ADA against CDCR. As 7 alleged in the proposed first amended complaint: 8 32. At all relevant times, Decedent was a qualified individual with a disability within the meaning of the Americans with Disabilities Act, as he 9 had a documented psychiatric disability requiring mental health treatment, support, and programming. 10 33. While housed at HDSP, Decedent was receiving mental health treatment appropriate to his diagnosed psychiatric conditions. Shortly after 11 the filing of this action, however, CDCR transferred Decedent to Calipatria State Prison, a facility that lacked the capacity to accommodate his mental 12 health needs, despite knowing of his documented disability and required treatment level. He was needlessly subjected to a grueling, distressing 13 transfer, only to be transferred again after just 10 days.

34. As a result of this unjustified transfer, Decedent was denied 14 meaningful access to necessary mental health services and programs, causing deterioration of his psychological condition and placing him at increased risk 15 of harm.

35. CDCR's decision to transfer Decedent to an institution unable 16 to accommodate his disability constituted discrimination on the basis of disability and a failure to provide reasonable accommodations, in violation of 17 Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132. 18 ECF No. 64-1, pgs. 11-12. 19 As with Plaintiff's other proposed new claims, this claim has no relationship to the 20 pending conditions-of-confinement claim, either legally or factually. Further, it seeks to impose 21 liability against CDCR, which is immune under the Eleventh Amendment. See *Alabama v. Pugh*, 22 438 U.S. 781, 782 (1978) (per curiam); *Hale v. Arizona*, 993 F.2d 1387, 1398-99 (9th Cir. 1993) 23 (en banc). 24 B. Judgment on the Pleadings 25 Motions for judgment on the pleadings under Federal Rule of Civil Procedure 26 12(c) are similar to motions under Rule 12(b) in that judgment on the pleadings is appropriate if 27 “. . . it is clear that no relief could be granted under any set of facts that could be proven 28 consistent with the allegations.” *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1 1988). Rather than testing whether the factual allegations state a claim, motions under Rule 12(c) 2 test whether, even if all the facts alleged in the complaint can be proved, defendants are 3 nonetheless entitled to judgment as a matter of law. See *Hal Roach Studios, Inc. v. Richard 4 Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989). All non-conclusory factual allegations 5 in the complaint must be assumed to be true. See *Austad v. United States*, 386 F.2d 147, 149 (9th 6 Cir. 1967); see also *McGlinchy*, 845 F.2d at 810.

7 Defendants argue that the remaining conditions-of-confinement claim fails as a 8 matter of law. More specifically, Defendants contend that an allegation of a one-time instance of 9 being served contaminated food does not rise to the level of a violation of Mr. Wynn's Eighth 10 Amendment rights. See ECF No. 63-1, pgs. 3-4. In opposition, Plaintiff contends that 11 Defendants' motion would be rendered moot by a first amended complaint. See ECF No. 66. 12 Defendants' argument is persuasive. As outlined above, Mr. Wynn alleged that he 13 was served contaminated food on a single occasion – February 21, 2021. See ECF Nos. 1 14 (original complaint) and 64-1 (proposed first amended complaint). This is insufficient to state a 15 claim. See *LeMaire v. Maass*, 12 F.3d

1444, 1456 (9th Cir. 1993); *Islam v. Jackson*, 782 F. Supp. 16 1111, 1114-15 (E.D. Va. 1992) (serving one meal contaminated with maggots and meals under 17 unsanitary conditions for thirteen days was not cruel and unusual punishment, even though 18 inmate suffered symptoms of food poisoning on one occasion); *Willard v. Cal. Dep't of Corr. & 19 Rehab.*, No. 19cv1074-AWI-SAB (PC), 2019 U.S. Dist. LEXIS 188512, at *22 (E.D. Cal. Oct. 20 29, 2019) (isolated and sporadic claims of contaminated food insufficient to state a claim under 21 the Eighth Amendment); *Johnson v. Dickinson*, No. CV 14-3390-VBF (SP), 2017 U.S. Dist. 22 LEXIS 236182, at *27 (C.D. Cal. Mar. 30, 2017) (single, isolated occurrence, in which plaintiff 23 neither ate the food nor suffered injury from it insufficient to state Eighth Amendment claim); 24 *Bennett v. Misner*, No. Civ. 02-1662-HA, 2004 U.S. Dist. LEXIS 19568, at *63 (D. Or. Sept. 17, 25 2004) (“Neither isolated instances of food poisoning, temporary lapses in sanitary food service, 26 nor service of meals contaminated with maggots are sufficiently serious to constitute an Eighth 27 Amendment violation”). 28 / / / 1 It should be noted that the February 21, 2021, incident was addressed in *Martinez 2 || v. Mundy*, 2:21-cv-1872-DAD-DMC-P. In that case, Mr. Martinez alleged that he was also 3 || served a contaminated lunch on February 21, 2021, at HDSP. See ECF No. 15 in *Martinez*. 4 || There, the Court determined that Mr. Martinez’ claim of a one-time denial of appropriate food 5 || failed to state a claim. See ECF Nos. 38 in *Martinez* (findings and recommendations to grant 6 || Defendant’s motion to dismiss) and 41 (District Judge order adopting findings and 7 || recommendations in full). 8

9 II. RECOMMENDATION

10 Based on the foregoing, the undersigned recommends as follows: 1] 1. Plaintiff's motion for leave to amend, ECF No. 64, be denied. 12 2. Defendants’ motion for judgment on the pleadings, ECF No. 63, be 13 | granted. 14 These findings and recommendations are submitted to the United States District 15 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b) (1).. Within 14 days 16 || after being served with these findings and recommendations, any party may file written objections 17 || with the Court. Responses to objections shall be filed within 14 days after service of objections. 18 || Failure to file objections within the specified time may waive the right to appeal. See *Martinez v. 19 Yist*, 951 F.2d 1153 (9th Cir. 1991). 20 21 || Dated: September 22, 2025 Co

22 DENNIS M. COTA

3 UNITED STATES MAGISTRATE JUDGE

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