

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. Mar. 7, 2025) · No. 5:20-cv-06326-EJD · Decided March 7, 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 24-cv-02417-EJD; Kramer v. Broomfield 12 13 14

15 INTRODUCTION

16 Plaintiff, a California prisoner, filed a pro se civil rights complaint alleging that defendants 17
violated his rights under the Eighth Amendment and the California constitution by transferring 18
over 100 inmates, some of whom were infected with COVID-19, from the California Institution
19 for Men (CIM) to San Quentin State Prison (SQSP)1 in May 2020. Dkt. No. 1 at 6. The case is
20 now before the Court for screening pursuant to 28 U.S.C. § 1915A(a), and service of the 21
complaint on defendants is ordered. Plaintiff will be granted leave to proceed in forma pauperis 22
by separate order. 23 This case has been consolidated with cases in this district related to the 2020
prisoner 24 transfer and related to the first case filed, No. 5:20-cv-06326-EJD, which now has the
caption “In 25 Re CIM-SQ Transfer Cases.” Pro se prisoner cases that are part of the consolidated
matter are 26 stayed except for the purposes of service. Service shall therefore proceed in
plaintiff’s case as 27 1 ordered below, but the case will remain stayed for all other purposes. The
docket for Case No. 24- 2 cv-02417 and all other individual dockets have been closed. If plaintiff
wishes to file any 3 motions, he must file them in Case No. 5:20-cv-06326-EJD and include his
original case number,

4 No. 24-cv-02417, on the left side of the heading.

5 STANDARD OF REVIEW

6 Federal courts must engage in a preliminary screening of cases in which prisoners seek 7 redress
from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 8
1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of 9
the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief

10 may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” Id. 11 § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). 13 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 14 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon 15 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to 16 state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to 17 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a 18 formulaic recitation of the elements of a cause of action will not do Factual allegations must 19 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 20 127 S. Ct. 1555, 1564-65 (2007) (citations omitted). A complaint must proffer “enough facts to 21 state a claim for relief that is plausible on its face.” Id. at 1974. 22 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a 23 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged 24 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 25 42, 48 (1988). 26 If a court dismisses a complaint for failure to state a claim, it should “freely give 27 leave” to amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). A court has discretion to 1 deny leave to amend due to “undue delay, bad faith or dilatory motive on the part of the movant, 2 repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the 3 opposing party by virtue of allowance of the amendment, [and] futility of amendment.” 4 *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008).

5 LEGAL CLAIMS

6 Plaintiff names the following defendants: 7 1. Ronald Broomfield, Acting Warden of SQSP 8 2. CDCR Secretary Ralph Diaz 9 3. J. Clark Kelso, Federal Receiver 10 4. Gavin Newsom, Governor 11 5. Clarence Cryer, CEO (medical) at SQSP 12 6. San Quentin Chief Medical Executive Dr. Alison Pachynski 13 7. San Quentin Chief Physician and Surgeon, Dr. Shannon Garrigan 14 8. Kathleen Allison, Director of CDCR 15 9. Dr. Joseph Bink, CCHCS Director 16 10. Dean Borders, CIM Warden 17 11. CDCR Medical Director R. Steven Tharratt 18 12. Louie Escobell, Health Care Chief Executive Officer at CIM 19 Dkt. No. 1 at 2-3. Plaintiff alleges that CIM was one of the first California prisons to 20 experience a COVID outbreak. Dkt. No. 1 at 6. Defendants were involved in transferring 21 individuals from CIM to SQSP in May 2020. Id. The transfer was rushed, the prisoners were not 22 adequately tested, and the arriving prisoners were not quarantined at SQSP despite showing 23 symptoms of COVID. Id. at 6-7, 12. Prisoners were not adequately spaced out on the busses. Id. 24 at 12. The virus began coursing its way through the prison. 25 Plaintiff and his cellmate were tested on June 23, 2020; plaintiff’s results were negative 26 while his cellmate’s were positive. Dkt. No. 1 at 8. Plaintiff requested a cell move from both 27 custody and medical staff, but was denied. Id. He continued to test negative for COVID on July 1 Id. He does not know, because San Quentin healthcare refused to conduct blood

tests to verify if 2 he had contracted COVID. Id. 3 Plaintiff seeks compensatory and punitive damages. Id. at 16. 4 Liberally construed, plaintiff's allegations state a plausible claim for deliberate 5 indifference to plaintiff's safety, in violation of the Eighth Amendment, against the majority of the 6 named defendants in their individual capacities. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). 7 Plaintiff's claims cannot proceed against the governor. While the allegations state 8 plausible claims against the majority of the named defendants based on their described positions 9 within CDCR or at specific prisons, the complaint does not state a plausible claim against 10 Governor Newsom because he is not a CDCR official who would plausibly have been involved in 11 the decisions surrounding the transfer. Liability may be imposed on an individual defendant under 12 § 1983 only if plaintiff can show that the defendant proximately caused the deprivation of a 13 federally protected right. See *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v. City of 14 Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a constitutional 15 right within the meaning of § 1983 if he does an affirmative act, participates in another's 16 affirmative act or omits to perform an act which he is legally required to do, that causes the 17 deprivation of which the plaintiff complains. See *Leer*, 844 F.2d at 633. Plaintiff's claim against 18 Governor Newsom will therefore be dismissed without prejudice. 19 Nor can his claims proceed against defendant Kelso. The Court dismisses defendant Kelso 20 on the basis of his quasi-judicial immunity. See *Harris v. Allison*, No. 20-CV-09393-CRB, 2022 21 WL 2232526, at *1 (N.D. Cal. June 7, 2022) (dismissing Kelso from a case raising materially 22 similar allegations as those made here); *In re CIM-SQ Transfer Cases*, No. 22-mc-80066-WHO at 23 Dkt. No. 63 (N.D. Cal. July 21, 2022) (same); *Patterson v. Kelso*, 698 F. App'x 393, 394 (9th Cir. 24 2017) ("Kelso is entitled to quasi-judicial immunity" with respect to negligence claim). 25 Nor can plaintiff's claims proceed against Steven Tharratt. The Court understands, as the 26 Attorney General has represented to another court in this district, that "[t]o the best of [the 27 Attorney General's] knowledge, [Dr.] Tharratt died on August 20, 2020." See Case No. 3:20-cv-1 Evidence 201 of the filing in that case, which attaches Dr. Tharratt's obituary published on the 2 California Department of Corrections and Rehabilitation website on October 6, 2020, available at 3 <https://www.cdcr.ca.gov/insidecdcr/2020/10/06/dr-robert-tharratt-longtime-cchcs-medical-director-passes-away/>. See *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th 5 Cir. 2006) (federal courts "may take judicial notice of court filings and other matters of public 6 record"); *Bullock v. Johnson*, No. CV 15-2070 PA (AS), 2018 WL 5880736, at *13 n.19 (C.D. 7 Cal. Aug. 10, 2018), report and recommendation adopted, No. CV 15-2070 PA (AS), 2018 WL 8 4791089 (C.D. Cal. Oct. 3, 2018) (taking judicial notice of CDCR obituary). 9 Dr. Tharratt's death therefore preceded the filing of this action on January 2, 2024. See 10 Dkt. No. 1. "[A] party cannot maintain a suit on behalf of, or against, or join, a dead person, or in 11 any other way make a dead person (in that person's own right, and not through a properly 12 represented estate or successor) party to a federal lawsuit." *LN Mgmt., LLC v. JPMorgan Chase 13 Bank, N.A.*, 957 F.3d 943, 955 (9th Cir. 2020). Defendant Tharratt was therefore not an 14 appropriately named

Defendant at the onset of this litigation and will be dismissed. 15 Nor can plaintiff's claims proceed against the overinclusive variety of unnamed individuals 16 whom plaintiff refers to. Plaintiff may later move to amend his complaint to name additional 17 defendants.

18 CONCLUSION

19 1. Defendant Tharratt is dismissed. 20 2. Defendant Kelso is dismissed. 21 3. Defendant Newsom is dismissed. 22 4. The Court orders that service on the following defendants shall proceed under the 23 California Department of Corrections and Rehabilitation's ("CDCR") e-service program for civil 24 rights cases from prisoners in the CDCR's custody: 25 1. Ronald Broomfield 26 2. Ralph Diaz 27 3. Clarence Cryer 1 5. Shannon Garrigan 2 6. Kathleen Allison 3 7. Joseph Bink 4 8. Dean Borders 5 9. Louie Escobell 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. 1), this Order of Service, a CDCR Report 8 of E-Service Waiver form, and a summons. The clerk also shall serve a copy of this order on the 9 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 10. 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] 11. = 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 12. '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 13. 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 14. The case will remain stayed for all purposes other than service of the complaint on 2 17 || defendants. 18 IT IS SO ORDERED. 19 Dated: March 7, 2025 20 Edward J. Davila 2] United States District Judge 22 23 24 25 26 27 28