

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Torres v. Newsome

Torres · No. 2:24-cv-2447-JDP (P) · Decided April 30, 2025

SUMMARY

The United States District Court for the Eastern District of California screened a pro se prisoner’s amended 42 U.S.C. § 1983 complaint concerning COVID-19 exposure and alleged retaliation for filing a grievance. The court found cognizable Eighth Amendment failure-to-protect claims against eight defendants and First Amendment retaliation claims against three defendants, while allowing the plaintiff either to proceed on those claims or file a second amended complaint.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 30, 2025
DOCKET	2:24-cv-2447-JDP (P)
DISPOSITION	other
PROCEDURAL POSTURE	Screening of a state prisoner’s first amended complaint in a 42 U.S.C. § 1983 action.
STANDARD OF REVIEW	Mandatory screening under 28 U.S.C. § 1915(e), applying the Rule 8(a)(2) plausibility standard and construing the pro se complaint liberally.
PRECEDENTIAL VALUE	unpublished

TOPICS

- section 1983
- prisoners rights
- first amendment
- pleadings
- civil procedure

PRACTICE AREAS

- civil rights litigation
- prisoner civil rights
- constitutional litigation
- pleading and screening

QUESTIONS PRESENTED

1. Whether the first amended complaint sufficiently alleged an Eighth Amendment failure-to-protect claim against the identified correctional and medical defendants.
2. Whether the complaint sufficiently alleged First Amendment retaliation claims based on plaintiff's filing of a prison grievance.
3. Whether supervisory officials could be held liable under 42 U.S.C. § 1983 based solely on their supervisory roles and alleged failure to prevent subordinate misconduct.
4. Whether delay or mishandling of plaintiff's prison grievance stated an independent constitutional claim.

HOLDINGS

1. For screening purposes, plaintiff sufficiently stated an Eighth Amendment failure-to-protect claim against Sullivan, MacNaught, Barton, Thorton, Stalter, R. Alkire, Dr. Davis, and Jane Doe #1 based on allegations that they knowingly exposed him to a substantial risk of COVID-19 and failed to take reasonable measures to prevent that risk.
2. For screening purposes, plaintiff sufficiently stated a First Amendment retaliation claim against Kelly, Bell, and Gaminchi based on allegations that they took adverse actions because plaintiff filed a prison grievance.
3. The claims against Governor Newsom, St. Andre, Williams, and Dr. Reuter failed because plaintiff alleged only supervisory responsibility and did not allege that those defendants participated in, directed, or knowingly failed to prevent the constitutional violations.
4. Plaintiff's allegations that R. Alkire, MacNaught, Sullivan, Ramos, Gomez, and B. Alkire participated in retaliation or delayed processing his grievance were insufficient to state a First Amendment or § 1983 claim without specific allegations of wrongdoing or a constitutional right to a particular grievance procedure.

KEY QUOTATIONS

"enough facts to state a claim to relief that is plausible on its face," (Opinion at 2)

"(1) . . . a state actor took some adverse action against [him] (2) because of (3) [his] protected conduct, and that such action (4) chilled the . . . exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal." (Opinion at 4)

FACTUAL BACKGROUND

Plaintiff alleged that his cellmate tested positive for COVID-19, that prison officials returned him to a cell with the infected cellmate despite his expressed concerns, and that he subsequently contracted COVID-19. He also alleged that several correctional officers harassed or otherwise took adverse actions against him after he filed a prison grievance, including publicly calling attention to the grievance, refusing to prepare a medical report, and ending a video call. Plaintiff additionally asserted supervisory-liability claims against prison and state officials based primarily on their alleged failure to enforce or supervise COVID-19 protocols.

PROCEDURAL HISTORY

Plaintiff, a state prisoner proceeding pro se, filed a first amended complaint against eighteen defendants alleging Eighth Amendment failure-to-protect claims arising from COVID-19 exposure and First Amendment retaliation claims arising from prison grievance activity. The court screened the complaint and found cognizable Eighth Amendment claims against eight defendants and a cognizable First Amendment retaliation claim against three defendants, while concluding that the remaining allegations failed to state a claim. Plaintiff was given thirty days either to proceed on the cognizable claims or file a second amended complaint; service was deferred if he amended.

DISPOSITION

other

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Kobold v. Good Samaritan Reg'l Med. Ctr., 832 F.3d 1024, 1038 (9th Cir. 2016)
- Nagrampa v. MailCoups, Inc., 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)
- Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam)
- Hayes v. Idaho Corr. Ctr., 849 F.3d 1204, 1208 (9th Cir. 2017)
- Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)
- Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
- Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)
- Sullivan v. Biter, No. 1:15-cv-243-DAD-SAB, 2017 WL 1540256, *1 (E.D. Cal. Apr. 28, 2017)
- Farmer v. Brennan, 511 U.S. 825, 934 (1994)
- Plata v. Newsom, 445 F. Supp. 3d 557, 559 (N.D. Cal. 2020)
- Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
- Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003)
- Mann v. Adams, 855 F.3d 639, 640 (9th Cir. 1988)
- Lacey v. Maricopa Cnty., 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ABRAHAM L. TORRES, Case No. 2:24-cv-2447-JDP (P) 12 Plaintiff, 13 v.
ORDER 14 GAVIN NEWSOME, et al., 15 Defendants. 16 17 18 Plaintiff, a state prisoner
proceeding pro se, brings this § 1983 action against eighteen 19 defendants, alleging violations of
the Eighth Amendment for inadequate medical care and of the 20 First Amendment for retaliation.

ECF No. 13. For the purposes of screening, plaintiff has 21 sufficiently alleged an Eighth
Amendment failure-to-protect claim against defendants Sullivan, 22 MacNaught, Barton, Thorton,

Stalter, R. Alkire, Dr. Davis, and Jane Doe #1, and a First 23 Amendment retaliation claim against Kelly, Bell, and Gaminchi.

However, the remainder of his 24 allegations fail to state a claim against the remaining defendants. Plaintiff may, if he chooses, file 25 an amended complaint that addresses the deficiencies noted herein, or he may proceed only on the 26 cognizable Eighth and First Amendment claims. 27 28 1 Screening and Pleading Requirements 2 A federal court must screen the complaint of any claimant seeking permission to proceed 3 in forma pauperis.

See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and 4 dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon 5 which relief may be granted, or seeks monetary relief from a defendant who is immune from such 6 relief. Id. 7 A complaint must contain a short and plain statement that plaintiff is entitled to relief, 8 Fed.

R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its 9 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not 10 require detailed allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S. 11 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere 12 possibility of misconduct,” the complaint states no claim.

Id. at 679. The complaint need not 13 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 14 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that 15 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 16 n.2 (9th Cir. 2006) (en banc) (citations omitted).

17 The court must construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404 18 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it 19 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which 20 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir.

2017). 21 However, “a liberal interpretation of a civil rights complaint may not supply essential elements 22 of the claim that were not initially pled.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 23 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 24 Analysis 25 I. Allegations 26 Plaintiff brings his first amended complaint against eighteen defendants: Gavin Newsom, 27 the Governor of California; St. Andre, Warden of High Desert State Prison (“HDSP”); Williams, 28 A Facility Captain of HDSP; R. Alkire, MacNaught, Sullivan, Bell, Ramos, Gomez, Barton, 1 Thorton, Stalter, B. Alkire, Gaminchi, Kelly, and Jane Doe #1, correctional officers at HDSP; and 2 Drs.

Rueter and Davis, physicians at HDSP. ECF No. 13 at 3-4. 3 Plaintiff first alleges that on August 13, 2024, his cellmate tested positive for COVID-19, 4 but he tested negative. Id. at 5. He informed custody staff that he did not feel comfortable 5 rooming with his cellmate, and he was

told to wait in the dayroom while they evaluated the 6 situation. Id. Thirty minutes later, he alleges that Sullivan informed him that MacNaught and 7 Barton were ordering plaintiff back to his cell with his sick cellmate.

Id. at 5, 15. He asserts that 8 he then contracted COVID-19 as a result, and that his sickness was due defendants' actions in 9 failing to follow proper COVID-19 protocols. Id. at 5-6. Plaintiff also alleges that on August 14, 10 2024, R. Alkire and MacNaught asked plaintiff's cellmate to move to an isolation cell, but the 11 cellmate refused. Id. at 10. Plaintiff inquired what they planned to do with plaintiff, and they 12 informed him that they would not move him because he had already been exposed to COVID-19.

13 Id. The next day, R. Alkire and MacNaught returned and again asked the cellmate to move to an 14 isolation cell, and the cellmate refused. Id. Plaintiff again voiced his concerns to no avail, and 15 plaintiff contracted COVID-19 as a result. Id. He also contends that Thorton and Stalter were 16 derelict in their duties by failing to require plaintiff's cellmate's extraction to an isolation cell.

Id. 17 at 16. He further contends that Dr. Davis and Jane Doe #1 were responsible for placing him back 18 in his cell with his sick cellmate, and that medical staff failed to check on him. Id. at 17. 19 Plaintiff alleges that he filed a grievance related to the above incidents, after which he 20 noticed a shift in how officers treated him. Id. at 12. He alleges that R. Alkire, MacNaught, 21 Sullivan, Bell, Ramos, Gomez, Gaminchi, and Kelly acted hostile toward him in retaliation for his 22 filing of a grievance.

Id. at 12. He generally alleges that these defendants "harass[ed] and 23 humiliate[d]" him. Id. at 13. He specifically alleges that in one incident, Kelly spoke on the 24 intercom and repeatedly called plaintiff's name, and asked why he filed a grievance, in an effort 25 to humiliate him. Id. Also, Bell refused to make a medical report for plaintiff. Id. Gaminchi 26 purposefully ended a video call plaintiff had with his mother, telling plaintiff that if he had a 27 problem with Gomez or Ramos, then he had a problem with Gaminchi.

Id. at 14. 28 1 Plaintiff alleges that when he filed his grievance, the grievance office filed it as a common 2 grievance instead of an emergency grievance, meaning his complaints were not heard for at least 3 two months. Id. at 16. He alleges that B. Alkire was culpable for this delay. Id. 4 Plaintiff also asserts that Governor Newsom is to blame for his contracting COVID-19, 5 because Governor Newsom failed to supervise the prison system and to ensure it was following 6 appropriate protocols.

Id. at 6. He asserts that St. Andre, as HDSP Warden, failed to properly 7 execute his duties in ensuring his staff follow appropriate protocols. Id. at 7. He also alleges that 8 Williams failed to ensure safety protocols of his subordinates and argues that he should be held 9 accountable. Id. at 9.

Finally, he asserts that Dr. Reuter should be held responsible for not enforcing medical protocols. *Id.* at 17. In each of these claims, plaintiff asserts that the defendants violated his Eighth Amendment right to be protected from COVID-19 and that they acted with a deliberate indifference to his needs. See generally *id.* at 5-17. II. Claims Against Governor Newsom, St. Andre, Williams, & Dr. Reuter As an initial matter, plaintiff's claims against Governor Newsom, St. Andre, Williams, and Dr. Reuter fail because there is no respondeat superior liability under § 1983.

Taylor v. List, 16 880 F.2d 1040, 1045 (9th Cir. 1989). Rather, a supervisory defendant is liable for the misconduct of his or her subordinates only if he or she participates in or directs that conduct, or if he or she knew of the violations and failed to act to prevent them. *Id.* Simply alleging that defendants "allowed" the mistreatment to occur is insufficient.

See *Sullivan v. Biter*, No. 1:15-cv-243-DAD- 20 SAB, 2017 WL 1540256, *1 (E.D. Cal. Apr. 28, 2017) ("Conclusory allegations that various prison officials knew or should have known about constitutional violations occurring against plaintiff simply because of their general supervisory role are insufficient to state a claim under 42 U.S.C. § 1983.").

Here, plaintiff simply alleges that Governor Newsom, St. Andre, Williams, and Dr. Reuter should be held liable for their subordinates' actions, but he does not allege that any of these defendants participated in, directed, or knew of and failed to prevent the alleged issues.

As such, plaintiff's claims against Governor Newsom, St. Andre, Williams, and Dr. Reuter fail. III. Eighth Amendment An Eighth Amendment claim premised on prison officials' failure to protect the plaintiff requires the plaintiff to allege that the deprivation at issue was objectively sufficiently serious, meaning that the conditions posed a substantial risk of serious harm and that the defendants were deliberately indifferent to that harm.

Farmer v. Brennan, 511 U.S. 825, 934 (1994). It is undisputed that COVID-19 poses a substantial risk of serious harm to inmates. *Plata v. Newsom*, 445 F. Supp. 3d 557, 559 (N.D. Cal. 2020) ("[N]o one questions that [COVID-19] poses a substantial risk of serious harm" to prisoners).

To be deliberately indifferent to a substantial risk of serious harm, defendants must be subjectively aware of the risk and fail to take reasonable measures to prevent such risk. *Farmer*, 511 U.S. at 847. For screening purposes, plaintiff has sufficiently alleged an Eighth Amendment claim against Sullivan, MacNaught, Barton, Thornton, Salter, R. Alkire, Dr. Davis, and Jane Doe #1 for their alleged failure to protect plaintiff from COVID-19.

However, to the extent plaintiff brings this claim against Bell, Ramos, Gomez, Gaminchi, and Kelly, his claims fail, because he has not alleged any specific facts supporting the contention that these defendants knew of and consciously disregarded a risk to plaintiff's health or safety.

See *Ivey v. Bd. of Regents*, 673 F.2d 17 266, 268 (9th Cir. 1982) (“Vague and conclusory allegations of official participation in civil 18 rights violations are not sufficient to withstand a motion to dismiss.”).

19 IV. First Amendment 20 While plaintiff has brought his claims under the Eighth Amendment, he appears to allege 21 that he was retaliated against for exercising his right to file a prison grievance, a potential First 22 Amendment violation.

As such, I will analyze these allegations under the First Amendment 23 framework. 24 For an inmate to sufficiently state a First Amendment retaliation claim, he must allege that 25 “(1)... a state actor took some adverse action against [him] (2) because of (3) [his] protected 26 conduct, and that such action (4) chilled the... exercise of his First Amendment rights, and 27 (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 28 408 F.3d 559, 567-68 (9th Cir.

2005). 1 Prisoners have a First Amendment right to file prison grievances, and the constitution 2 protects inmates from being retaliated against in connection with exercise of this right. *Id.* at 567. 3 However, inmates lack a separate constitutional right to any specific procedures in a state-created 4 prison grievance system. *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir.

2003); *Mann v. Adams*, 5 855 F.3d 639, 640 (9th Cir. 1988). As such, “because inmates have no constitutional right to a 6 prison grievance system, the actions of the prison officials in reviewing [the plaintiff’s] internal 7 appeal cannot create liability under § 1983.” *Ramirez*, 334 F.3d at 860. 8 For the purposes of screening, plaintiff has sufficiently pled a First Amendment retaliation 9 claim against Kelly, Bell, and Gaminchi.

See *id.* at 567-68. However, his First Amendment 10 retaliation claims against R. Akirie, MacNaught, Sullivan, Bell, Ramos, and Gomez fail because 11 plaintiff makes no specific allegations that these defendants participated in any wrongdoing. See 12 generally ECF No. 13 at 12-14. Plaintiff only generally alleges that these defendants participated 13 in retaliatory conduct, and such conclusory allegations are insufficient to state a claim.

See *Ivey*, 14 673 F.2d at 268. Additionally, plaintiff’s claim against B. Alkire also fails, because plaintiff 15 merely alleges that B. Alkire was involved in a delay in processing his grievance; this is 16 insufficient to create § 1983 liability. See *Ramirez*, 334 F.3d at 860. 17 Conclusion 18 Plaintiff may either (1) notify the court that he wishes to proceed on his cognizable Eighth 19 Amendment failure to protect claim against Sullivan, MacNaught, Barton, Thorton, Stalter, R. 20 Alkire, Dr. Davis, and Jane Doe #1, and First Amendment retaliation claim against Kelly, Bell, 21 and Gaminchi, in which case I will direct service, or (2) plaintiff may elect to amend his 22 complaint.

If plaintiff amends his complaint, I will delay serving any defendant and will screen 23 his amended complaint in due course. Plaintiff is reminded that any amended complaint will 24 supersede the current complaint. See *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 907 n.1 (9th Cir. 25 2012) (en banc).

The amended complaint should be titled “Second Amended Complaint” and 26 refer to the appropriate case number. 27 28 1 Accordingly, it is hereby ORDERED that: 2 1. Within thirty days from the service of this order, plaintiff must indicate his intent to 3 | proceed only with his Eighth Amendment failure to protect claim against Sullivan, MacNaught, 4 | Barton, Thorton, Stalter, R. Alkire, Dr. Davis, and Jane Doe #1, and First Amendment retaliation 5 | claim against Kelly, Bell, and Gaminchi, or he must file an amended complaint.

If he selects the 6 | latter, no defendants will be served until the new complaint is screened. 7 2. The Clerk of Court shall send plaintiff a § 1983 complaint form with this order. 8 9 IT IS SO ORDERED. 10 (1 ow — Dated: _ April 30, 2025 q—— 11 JEREMY D. PETERSON 10 UNITED STATES MAGISTRATE JUDGE 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28