

**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

OPINION

(PC) Torres v. Newsome

PER CURIAM.

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 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). However, "a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled." *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

I. Allegations

Plaintiff brings his first amended complaint against eighteen defendants: Gavin Newsom, the Governor of California; St. Andre, Warden of High Desert State Prison ("HDSP"); Williams, A Facility Captain of HDSP; R. Alkire, MacNaught, Sullivan, Bell, Ramos, Gomez, Barton, Thorton, Stalter, B. Alkire, Gaminchi, Kelly, and Jane Doe #1, correctional officers at HDSP; and Drs. Rueter and Davis, physicians at HDSP. ECF No. 13 at 3-4.

Plaintiff first alleges that on August 13, 2024, his cellmate tested positive for COVID-19, but he tested negative. *Id.* at 5. He informed custody staff that he did not feel comfortable rooming with his cellmate, and he was told to wait in the dayroom while they evaluated the situation. *Id.* Thirty minutes later, he alleges that Sullivan informed him that MacNaught and Barton were ordering plaintiff back to his cell with his sick cellmate. *Id.* at 5, 15. He asserts that he then contracted COVID-19 as a result, and that his sickness was due defendants' actions in failing to follow proper COVID-19 protocols. *Id.* at 5-6. Plaintiff also alleges that on August 14, 2024, R. Alkire and MacNaught asked plaintiff's cellmate to move to an isolation cell, but the cellmate refused. *Id.* at 10. Plaintiff inquired what they planned to do with plaintiff, and they informed him that they would not move him because he had already been exposed to COVID-19. *Id.* The next day, R. Alkire and MacNaught returned and again asked the cellmate to move to an isolation cell, and the cellmate refused. *Id.* Plaintiff again voiced his concerns to no avail, and plaintiff contracted COVID-19 as a result. *Id.* He also contends that Thorton and Stalter were derelict in their duties by failing to require plaintiff's cellmate's extraction to an isolation cell. *Id.* at 16. He further contends that Dr. Davis and Jane Doe #1 were responsible for placing him back in his cell with his sick cellmate, and that medical staff failed to check on him. *Id.* at 17. Plaintiff alleges that he filed a grievance related to the above incidents, after which he noticed a shift in how officers treated him. *Id.* at 12. He alleges that R. Alkire, MacNaught, Sullivan, Bell, Ramos, Gomez, Gaminchi, and Kelly acted hostile toward him in retaliation for his filing of a grievance. *Id.* at 12. He generally alleges that these defendants "harass[ed] and humiliate[d]" him. *Id.* at 13. He specifically alleges that in one incident, Kelly spoke on the intercom and repeatedly called plaintiff's name, and asked why he filed a grievance, in an effort to humiliate him. *Id.* Also, Bell refused to make a medical report for plaintiff. *Id.* Gaminchi purposefully ended a video call plaintiff had with his mother, telling plaintiff that if he had a problem with Gomez or Ramos, then he had a problem with Gaminchi. *Id.* at 14.

Plaintiff alleges that when he filed his grievance, the grievance office filed it as a common 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 10 enforcing medical protocols. Id. at 17. In each of these claims, plaintiff asserts that the 11 defendants violated his Eighth Amendment right to be protected from COVID-19 and that they 12 acted with a deliberate indifference to his needs. See generally id. at 5-17. 13

II. Claims Against Governor Newsom, St. Andre, Williams, & Dr. Reuter 14 As an initial matter, plaintiff's claims against Governor Newsom, St. Andre, Williams, 15 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 17 of his or her subordinates only if he or she participates in or directs that conduct, or if he or she 18 knew of the violations and failed to act to prevent them. Id. Simply alleging that defendants 19 "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 21 prison officials knew or should have known about constitutional violations occurring against 22 plaintiff simply because of their general supervisory role are insufficient to state a claim under 42 23 U.S.C. § 1983."). Here, plaintiff simply alleges that Governor Newsom, St. Andre, Williams, and 24 Dr. Reuter should be held liable for their subordinates' actions, but he does not allege that any of 25 these defendants participated in, directed, or knew of and failed to prevent the alleged issues. As 26 such, plaintiff's claims against Governor Newsom, St. Andre, Williams, and Dr. Reuter fail. 27 28

1 III. Eighth Amendment 2 An Eighth Amendment claim premised on prison officials' failure to protect the plaintiff 3 requires the plaintiff to allege that the deprivation at issue was objectively sufficiently serious, 4 meaning that the conditions posed a substantial risk of serious harm and that the defendants were 5 deliberately indifferent to that harm. *Farmer v. Brennan*, 511 U.S. 825, 934 (1994). It is 6 undisputed that COVID-19 poses a substantial risk of serious harm to inmates. *Plata v. Newsom*, 7 445 F. Supp. 3d 557, 559 (N.D. Cal. 2020) ("[N]o one questions that [COVID-19] poses a 8 substantial risk of serious harm" to prisoners). To be deliberately different to a substantial risk of 9 serious harm, defendants must be subjectively aware of the risk and fail to take reasonable 10 measures to prevent such risk. *Farmer*, 511 U.S. at 847. 11 For screening purposes, plaintiff has sufficiently alleged an Eighth Amendment claim 12 against Sullivan, MacNaught, Barton, Thorton, Salter, R. Alkire, Dr. Davis, and Jane Doe #1 for 13 their alleged failure to protect plaintiff from COVID-19. However, to the extent plaintiff brings 14 this claim against Bell, Ramos, Gomez, Gaminchi, and Kelly, his claims fail, because he has not 15 alleged any specific facts supporting the contention that these defendants knew of and 16

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, Thornton, 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, Thornton, 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