

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Wolinski v. Moseley

No. 25-cv-0802-AGS-LR (S.D. Cal. Aug. 5, 2025) · No. 25-cv-0802-AGS-LR · Decided August 5, 2025

OPINION

Wolinski v. Moseley

PER CURIAM.

1 NOT FOR PUBLICATION

2

3 UNITED STATES DISTRICT COURT

4 SOUTHERN DISTRICT OF CALIFORNIA

5 Krzysztof WOLINSKI, Case No.: 25-cv-0802-AGS-LR 6 Plaintiff,

ORDER GRANTING MOTION TO

7 vs. PROCEED IN FORMA PAUPERIS

(ECF 4), DENYING AS MOOT

8 Howard MOSELEY, et al.,

PLAINTIFF’S EXTENSION

9 Defendants. REQUEST (ECF 3), AND

SCREENING COMPLAINT

10 11 Krzysztof Wolinski, an unrepresented state prisoner claiming civil-rights violations 12 under
42 U.S.C. § 1983, is seeking to proceed in forma pauperis, that is, without prepaying 13 the usual
fees.¹ The motion to proceed IFP is granted, but all claims and defendants are 14 dismissed except
several claims against defendant Dr. Blaisdell and a due process claim 15 against correctional
counselor J. Cota and warden Rafael Acevedo. Wolinski may choose 16 to amend or to proceed
only with the claims that survive screening.

17 MOTION TO PROCEED IN FORMA PAUPERIS

18 Anyone instituting a civil action in a district court of the United States must typically 19 pay a
filing fee of \$405—consisting of a \$350 statutory fee plus an additional \$55 20 administrative fee
—although the administrative fee does not apply to persons granted leave 21 to proceed IFP. See
28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District 22 Court Misc. Fee Schedule,
§ 14 (eff. Dec. 1, 2023)). The action may proceed despite a 23 plaintiff’s failure to prepay the
entire fee only if he is granted leave to proceed IFP. See 24 *Andrews v. Cervantes*, 493 F.3d 1047,
1051 (9th Cir. 2007). Prisoners seeking leave to 25 26 27 1 The Court interprets the filing of
Wolinski’s prisoner-trust-account statement as an IFP request. (See ECF 4); *Estelle v. Gamble*,
429 U.S. 97, 106 (1976) (noting that courts 28 1 proceed IFP must submit a “certified copy of the

trust fund account statement (or 2 institutional equivalent) for . . . the 6-month period immediately preceding the filing of the 3 complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). 4 From the certified trust account statement, the Court assesses an initial payment of 20% of 5 (a) the average monthly deposits in the account for the past six months, or (b) the average 6 monthly balance in the account for the past six months, whichever is greater, unless the 7 prisoner has insufficient assets. See 28 U.S.C. § 1915(b)(1) & (4); *Bruce v. Samuels*, 8 577 U.S. 82, 84 (2016). Prisoners who proceed IFP must pay any remaining balance in 9 “increments” or “installments,” regardless of whether their action is ultimately dismissed. 10 28 U.S.C. § 1915(b)(1) & (2); *Bruce*, 577 U.S. at 84. 11 Wolinski’s prison certificate shows he had an average monthly balance of \$0.00 and 12 average monthly deposits of \$0.00 for the six months preceding the filing of this action, 13 and an available balance of \$0.00. (ECF 4, at 1.) The Court grants Wolinski’s motion to 14 proceed IFP with no initial partial filing fee.

15 SCREENING

16 The Court must screen and dismiss a prisoner’s IFP complaint, or any portion of it, 17 which is frivolous, malicious, fails to state a claim, or seeks damages from defendants who 18 are immune. See *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) 19 (discussing 28 U.S.C. § 1915(e)(2) screening); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 20 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b) screening). “The standard for 21 determining whether a plaintiff has failed to state a claim upon which relief can be granted 22 under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) 23 standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 24 2012); see also *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012) (same for § 1915A 25 screening). Rule 12(b)(6) requires a complaint to “contain sufficient factual matter, 26 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 27 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 28 (2007)). 1 A. Complaint’s Allegations 2 According to the complaint, on “June 17, 2024,” Wolinski was transferred to the 3 “Richard J. Donovan Correctional Facility.” (ECF 1, at 2.) From there, plaintiff alleges 4 many problems have arisen. First, he claims that he “immediately filed [a] request for 5 physical access” to the law library but was denied by the librarian as an “act of retribution 6 and retaliation for” Wolinski’s pending “litigations.” (Id. at 11.) He also alleges that two 7 educators at the prison “subvert[ed] and despoil[ed]” his right to a PELL grant and 8 prevented him from enrolling in college. (Id. at 3–4, 10–14.) This, in turn, would have 9 allowed him to earn custody credits to shorten his sentence. And several defendants 10 allegedly teamed up to retaliate against him when he complained about this lack of access. 11 (Id. at 6–7, 21.) 12 Next, Wolinski claims that several defendants denied him appropriate and timely 13 medical care after a surgery in retaliation for Wolinski’s utilizing “in good faith the Prison 14 Grievances process CDCR-602HC.” (ECF 1, at 15–16.) Indeed, Wolinski goes on to claim 15 that the retaliation infected several other portions of his incarceration, including being 16 assigned to a cell only “50% the required size for” a disabled inmate, three “attempted” 17

“malicious[.]” “transfers,” and the theft of “personal property.” (Id. at 19, 25.) 18 Based on these facts, Wolinski claims defendants violated his rights in various ways, 19 as discussed below. 20 B. Medical Claim 21 Wolinski alleges Dr. Reynaga and defendant Dr. Blaisdell denied him adequate 22 medical care in violation of the Eighth Amendment by “by their act of denying adequate 23 Health Care Refill of Medications and other Prescriptions, and deliberately delaying 24 required Care until his P[rimary] C[are] P[hysician] Dr. R. Zhang[’s] return.” (ECF 1, 25 at 15–17.) 26 “[T]o prevail on an Eighth Amendment claim for inadequate medical care, a plaintiff 27 must show ‘deliberate indifference’ to his ‘serious medical needs.’” Colwell v. Bannister, 28 763 F.3d 1060, 1066 (9th Cir. 2014) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). 1 “Deliberate indifference ‘may appear when prison officials deny, delay or intentionally 2 interfere with medical treatment, or it may be shown by the way in which prison physicians 3 provide medical care.’” Id. (quoting Hutchinson v. United States, 838 F.2d 390, 394 4 (9th Cir. 1988)). 5 “[A] prison official violates the Eighth Amendment when two requirements are met. 6 First, the deprivation alleged must be, objectively, ‘sufficiently serious.’” Farmer v. 7 Brennan, 511 U.S. 825, 834 (1994). Second, plaintiffs must allege the prison official they 8 seek to hold liable had a “sufficiently culpable state of mind.” Id. “[T]hat state of mind is 9 one of ‘deliberate indifference’ to inmate health or safety.” Id. A prison official can be held 10 liable only if that official “knows of and disregards an excessive risk to inmate health and 11 safety”; the official “must both be aware of facts from which the inference could be drawn 12 that a substantial risk of serious harm exists, and he must also draw the inference.” Id. 13 at 837. 14 Wolinski was recovering from surgery when Dr. Reynaga and Dr. Blaisdell 15 allegedly denied him appropriate medical care. (See ECF 1, at 7.) He needed his pain 16 medication prescriptions refilled, but Dr. Blaisdell “deliberately” and “maliciously” 17 declined to follow clear and specific instructions for post-surgical care issued by 18 Wolinski’s surgeon in failing to provide the pain medication, and told Wolinski “this will 19 teach you to stop 602ing.” (Id. at 7, 16.) (CDCR Form 602 for the California Department 20 of Corrections and Rehabilitation is the inmate appeal form.) When Wolinski complained 21 to the Donovan chief medical executive, Dr. Blaisdell purportedly retaliated on January 22, 22 2025, by altering his file and falsifying medical records to deprive him of a replacement 23 for an air mattress destroyed by defendant correctional sergeant Keene, for which Wolinski 24 was denied compensation. (Id. at 4, 16, 24.) 25 These allegations are sufficient to state an Eighth Amendment medical claim and to 26 survive the “low threshold” of screening. See Prewitt v. Roos, 160 F. App’x 609, 610 27 (9th Cir. 2005) (holding that plaintiff “established a constitutional violation by alleging 28 that the defendants acted with deliberate indifference to serious medical needs by failing 1 to provide his pain medication at the times and frequency specifically and repeatedly 2 prescribed by [plaintiff]’s doctors and by failing to follow post-surgical discharge 3 instructions”). 4 But Wolinski fails to state a claim regarding his allegation that Dr. Blaisdell lied 5 when he said Wolinski would not benefit from replacement of the air mattress that Keene 6 destroyed. Critically, there are no allegations that any defendant was

aware of and 7 deliberately disregarded a serious medical need for the air mattress. Farmer, 511 U.S. 8 at 834. The complaint at most alleges Dr. Blaisdell disagreed with Dr. Zhang and Wolinski 9 that the air mattress was medically necessary. See Colwell v. Bannister, 763 F.3d 1060, 10 1068 (9th Cir. 2014) (“A difference of opinion between a physician and the prisoner—or 11 between medical professionals—concerning what medical care is appropriate does not 12 amount to deliberate indifference.”). 13 C. Retaliation Claim 14 “Within the prison context, a viable claim of First Amendment retaliation entails 15 five basic elements: (1) An assertion that a state actor took some adverse action against an 16 inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled 17 the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably 18 advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567–68 (2005) 19 (footnote omitted). As to the second element (“because of”), Wolinski must allege a 20 retaliatory motive, that is, a causal connection between the adverse action and his protected 21 conduct. See Watison, 668 F.3d at 1114. 22 Throughout the complaint, Wolinski claims the defendants retaliated against him in 23 various ways for engaging in litigation and filing inmate grievances. Yet the only factual 24 allegation of retaliatory intent is that Dr. Blaisdell refused to provide Wolinski a prescribed 25 post-surgical pain medication and told Wolinski: “[T]his will teach you to stop 602ing.” 26 (ECF 1, at 16.) While those allegations sufficiently plead Dr. Blaisdell’s retaliatory motive, 27 Wolinski has not plausibly alleged that any other defendant took an adverse action against 28 him because of his protected conduct. See Rhodes, 408 F.3d at 567–68; Soranno’s Gasco, 1 Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989) (holding that plaintiff must show that 2 the protected conduct was a “substantial” or “motivating” factor in the defendant’s decision 3 to act). “[M]ere speculation that defendants acted out of retaliation is not sufficient.” Wood 4 v. Yordy, 753 F.3d 899, 905 (9th Cir. 2014). 5 Accordingly, Plaintiff’s retaliation claim against Dr. Blaisdell survives screening, 6 but the retaliation claim is dismissed as to all other defendants. 7 D. Disability Claims 8 Wolinski next alleges that, because he has “a physical disability,” defendants’ 9 actions violated the ADA and the Rehabilitation Act. (ECF 1, at 9); see also 42 U.S.C. 10 § 12132 (Title II ADA); 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act). He refers 11 to himself as “an A.D.A. Title II Prisoner with serious medical needs” who is housed in a 12 cell that is 50% smaller than necessary to accommodate a wheelchair. (ECF 1, at 19.) But 13 Wolinski does not identify the nature of his disability nor provide any factual allegations 14 regarding why he believes any defendant took any action because of that disability. 15 To state an ADA claim, Wolinski must allege: 16 (1) he is an individual with a disability; (2) he is otherwise qualified to participate in or receive the benefit of some public entity’s services, programs, 17 or activities; (3) he was either excluded from participation in or denied the 18 benefits of the public entity’s services, programs, or activities, or was otherwise discriminated against by the public entity; and (4) such exclusion, 19 denial of benefits, or discrimination was by reason of his disability. 20 21 McGary v. City of Portland, 386 F.3d 1259, 1265 (9th Cir. 2004) (cleaned up). “The 22 elements of a claim under section 504 of

the Rehabilitation Act are the same, with the 23 additional requirement that the program at issue receive federal funds.” *Cox v. Narkiewicz*, 24 No. 19cv1486-JCC-MLP, 2019 WL 11753650, at *6, (W.D. Wash. Oct. 31, 2019). This is 25 because “there is no significant difference in the analysis of rights and obligations created 26 by the two Acts.” *Payan v. Los Angeles Community College Dis.*, 11 F.4th 729, 737 27 (9th Cir. 2021). 28 The complaint fails to state a claim under either statute because Wolinski’s 1 allegations are deficient as to at least two elements. The allegation that Wolinski “is an 2 individual with a disability” is entirely conclusory, so it stumbles at the first element. And 3 the complaint fails to plausibly allege that any defendant’s actions were taken by reason of 4 Wolinski’s disability, so it falters at the fourth element as well. 5 In addition, the complaint fails to state an ADA claim because only individual 6 defendants are named. The “ADA applies only to public entities.” *Lovell v. Chandler*, 7 303 F.3d 1039, 1052 (9th Cir. 2002). So a “plaintiff cannot bring an action under 42 U.S.C. 8 § 1983 against a State official in [his] individual capacity to vindicate rights created by 9 Title II of the ADA.” *Vinson v. Thomas*, 288 F.3d 1145, 1156 (9th Cir. 2002). 10 The ADA and Rehabilitation Act claims are dismissed. 11 E. Due Process Claim 12 Wolinski also claims that several defendants violated his due process rights. 13 Specifically, he alleges that: defendant Keene destroyed Wolinski’s air mattress; Dr. 14 Blaisdell, Nieto, and Mercado falsified and forged records to deprive Wolinski of a 15 replacement mattress or compensation; Silva and Byrd-Hunt—the correctional officers in 16 charge of incoming prisoner’s property—stole his personal property, apparently a 17 typewriter ribbon and a radio; Cota and Garcia attempted to transfer him several times from 18 Donovan prison; and Cota and Acevedo “despoiled” Wolinski of good credits by 19 preventing his “access to education.” (ECF 1, at 4–6, 16, 18–19, 21, 26; ECF 1-2, at 3.) 20 The Due Process Clause of the Fourteenth Amendment prohibits states from 21 “depriv[ing] any person of life, liberty, or property, without due process of law.” 22 U.S. Const. amend. XIV, § 1. To plausibly allege a federal due process claim, Wolinski 23 “must establish that one of these interests is at stake.” See *Wilkinson v. Austin*, 545 U.S. 24 209, 221 (2005). 25 Wolinski has failed to state a due process claim based on the loss of his personal 26 property. “[A]n unauthorized intentional deprivation of property by a state employee does 27 not constitute a violation of the procedural requirements of the Due Process Clause of the 28 Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available.” 1 *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). “California Law provides an adequate post- 2 deprivation remedy for any property deprivations.” *Barnett v. Centoni*, 31 F.3d 813, 816– 3 17 (9th Cir. 1994) (citing Cal. Gov’t Code §§ 810–95). 4 Wolinski has also failed to state a claim for denial of due process regarding the 5 attempts to transfer him from R.J. Donovan Correctional Facility, because inmates do not 6 have a due process right to reside at a particular prison. See, e.g., *Moody v. Daggett*, 7 429 U.S. 78, 88 n.9 (1976) (holding that prisoners have no due process right to avoid 8 transfers even to “a substantially less agreeable prison”); *Myron v. Terhune*, 476 F.3d 716, 9 718 (9th Cir. 2007) (concluding California prisoner’s placement at a “‘level IV’ prison 10 rather than

at a ‘level III’ prison does not . . . present an ‘atypical and significant hardship’” 11 sufficient to “conceivably create a liberty interest”). 12 If Wolinski seeks to bring a claim arising from Acevedo’s failure to process inmate 13 grievances (see ECF 1, at 16), that cause of action is deficient. “There is no legitimate claim 14 of entitlement to a grievance procedure.” *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 15 1988); see also *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (“[I]nmates lack a 16 separate constitutional entitlement to a specific prison grievance procedure.”). 17 As for his last due-process claim, Wolinski alleges he was denied the opportunity to 18 earn custody credits to shorten his sentence by attending college. A state may “provide[]” 19 inmates with “a statutory right to good time” credit that “is to be forfeited only for serious 20 misbehavior”; if so, such enactments are relevant to the due-process analysis. *Wolff v. 21 McDonnell*, 418 U.S. 539, 557 (1974). By “creat[ing] the right to good time and itself 22 recognizing that its deprivation is a sanction authorized for major misconduct,” the state is 23 also recognizing that “the prisoner’s interest has real substance and is sufficiently embraced 24 within Fourteenth Amendment ‘liberty’ to entitle [the inmate] to those minimum 25 procedures appropriate under the circumstances and required by the Due Process Clause to 26 insure that the state-created right is not arbitrarily abrogated.” *Id.* 27 California provides a right to educational merit credits: “all incarcerated persons 28 eligible for Good Conduct Credit . . . shall be eligible for Educational Merit Credit.” Cal. 1 Code Regs. tit. 15, § 3043.5(b). And the credit “shall be forfeited . . . upon a finding of 2 guilt of a serious rule violation.” *Id.* § 3043.5 (f). So California “created the right to good 3 time” in this context, see *Wolff*, 418 U.S. at 557, and Wolinski alleges that defendants Cota 4 and Acevedo “denied [his] ability to earn extra credits toward his release because of Staff 5 retaliatory behavior and conduct against him” (see ECF 1, at 13, 18–19, 25). His 6 good-credits-related due-process claim thus clears the “low threshold” for § 1915(e) 7 screening. See *Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012). 8 Accordingly, plaintiff’s Fourteenth Amendment due-process claim survives against 9 Cota and Acevedo. 10 F. Access-to-Courts Claim 11 Wolinski claims that defendants Blahnik, Moseley, Acevedo, and Cota blocked his 12 access to the law library and otherwise denied him meaningful access to the courts. (ECF 1, 13 at 6–7, 9–12, 21.) Among other things, Wolinski alleges that Blahnik confiscated his legal 14 papers when he arrived at Donovan and has yet to return them. (ECF 1-2, at 2.) 15 Inmates share in the “fundamental constitutional right of access to the courts.” *Lewis 16 v. Casey*, 518 U.S. 343, 346 (1996). To state a claim for a violation of that right, Wolinski 17 must allege facts showing actual injury arising from the lack of access to his legal materials, 18 that is, “actual prejudice with respect to contemplated or existing litigation, such as the 19 inability to meet a filing deadline or to present a claim.” *Id.* at 348–49. In particular, he 20 must allege the loss of a “nonfrivolous, arguable underlying claim.” *Christopher v. 21 Harbury*, 536 U.S. 403, 413–14 (2002) (cleaned up). The nature and description of the 22 underlying claim must be set forth in the pleading “as if it were being independently 23 pursued.” *Id.* at 417. Wolinski has failed to satisfy those pleading standards, as he has not 24 plausibly alleged an actual injury. Rather, he incorrectly

asserts that he is not required to 25 make such an allegation. (ECF 1, at 11.) 26 The access-to-courts cause of action is thus dismissed. 27 G. Equal Protection Claim 28 Wolinski claims defendants discriminated against him in violation of his equal 1 protection rights while housed at Donovan prison. (ECF 1, at 2–6, 20–22, 25.) The Equal 2 Protection Clause of the Fourteenth Amendment “requires the State to treat all similarly 3 situated people equally.” See, e.g., *Hartmann v. California Dep’t of Corr. & Rehab.*, 4 707 F.3d 1114, 1123 (9th Cir. 2013). “To prevail on an Equal Protection claim brought 5 under § 1983, Plaintiffs must allege facts plausibly showing that the defendants acted with 6 an intent or purpose to discriminate against them based upon membership in a protected 7 class.” *Id.*; see also *Maynard v. City of San Jose*, 37 F.3d 1396, 1404 (9th Cir. 1994) 8 (“Intentional discrimination means that a defendant acted at least in part because of a 9 plaintiff’s protected status.”); *Fields v. Legacy Health Sys.*, 413 F.3d 943, 955 (9th Cir. 10 2005) (identifying “race, alienage, national origin” as examples of characteristics protected 11 by the Equal Protection Clause). 12 There are no factual allegations in the complaint that plausibly allege any defendant 13 intentionally discriminated against Wolinski because of a protected status. Thus, his equal 14 protection claim is dismissed. 15 H. Conspiracy Claim 16 Wolinski alleges that Acevedo and Cota conspired to deprive him of access to the 17 courts (ECF 1, at 6); that Dr. Blaisdell, Ochoa, Mondet, Blahnik, and Mihalic conspired to 18 deny him replacement and compensation for his air mattress (*id.* at 7–8, 16); and that Cota 19 and Garcia conspired to attempt to transfer him from Donovan (*id.* at 19.) He also claims 20 the defendants conspired to racially discriminate against him in violation of 42 U.S.C. 21 §§ 1981(c), 1985(3), and 1986. (ECF 1, at 5–6, 8, 17, 22.) 22 To state a conspiracy claim under 42 U.S.C. § 1983, Wolinski “must show an 23 agreement or meeting of the minds to violate constitutional rights.” *Franklin v. Fox*, 24 312 F.3d 423, 441 (9th Cir. 2002) (quotation marks omitted). The allegations of conspiracy 25 in the complaint here fail as entirely conclusory, as there are no factual allegations plausibly 26 supporting a finding that any defendant agreed to violate Wolinski’s constitutional rights. 27 See *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 1989) (holding that 28 “conclusory allegations that [the defendants] conspired do not support a claim for violation 1 of [plaintiff’s] constitutional rights under § 1983”); *Barren v. Harrington*, 152 F.3d 1193, 2 1194 (9th Cir. 1998) (“A plaintiff must allege facts, not simply conclusions, that show that 3 an individual was personally involved in the deprivation of his civil rights.”) 4 For the same reason, Wolinski has not stated a conspiracy claim under 42 U.S.C. 5 §§ 1981(c), 1985(3), or 1986. See *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 6 621, 626 (9th Cir. 1988) (“A mere allegation of conspiracy without factual specificity is 7 insufficient” to state a claim under 42 U.S.C. §§ 1985 or 1986); see also *Bray v. Alexandria 8 Women’s Health Clinic*, 506 U.S. 263, 267–69 (1993) (“[T]o prove a private conspiracy in 9 violation of the first clause of § 1985(3), a plaintiff must show, inter alia, (1) that some 10 racial, or perhaps otherwise class-based, invidiously discriminatory animus lay behind the 11 conspirators’ action, and (2) that the conspiracy aimed at interfering with rights that are 12 protected against private, as well as official,

encroachment.” (cleaned up).); *Yoshikawa v. 13 Seguirant*, 74 F.4th 1042, 1047 (9th Cir. 2023) (“Section 1981 establishes substantive 14 rights that a state actor may violate. It does not itself contain a remedy against a state actor 15 for such violations.”). 16 The conspiracy claims are dismissed. 17 I. State-Law Claims 18 Finally, Wolinski brings several state-law causes of action, which largely fail, again 19 excepting certain claims against Dr. Blaisdell. 20 1. Infliction of Emotional Distress 21 Wolinski claims the defendants deliberately and maliciously inflicted emotional 22 distress on him. (ECF 1, at 8, 18, 23–24, 26.) Under California law, “[n]egligent infliction 23 of emotional distress is a form of the tort of negligence, to which the elements of duty, 24 breach of duty, causation and damages apply.” *Huggins v. Longs Drug Stores California, 25 Inc.*, 6 Cal.4th 124, 129 (1993); see also *Butler-Rupp v. Lourdeaux*, 134 Cal.App.4th 1220, 26 1226 n.1 (2005) (identifying the elements of negligent infliction of emotional distress as 27 “1. The defendant engaged in negligent conduct; 2. The plaintiff suffered serious emotional 28 distress; 3. The defendants’ negligent conduct was a cause of the serious emotional 1 distress.”). By contrast, a claim for intentional infliction of emotional distress requires 2 “(1) extreme and outrageous conduct by the defendant with the intention of causing, or 3 reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s 4 suffering severe or extreme emotional distress; and (3) actual and proximate causation of 5 the emotional distress by the defendant’s outrageous conduct.” *Hughes v. Pair*, 46 Cal.4th 6 1035, 1050 (2009) (quotation marks omitted). A defendant’s conduct is “outrageous” when 7 it is so “extreme as to exceed all bounds of that usually tolerated in a civilized community.” 8 *Id.* 9 Wolinski has plausibly alleged that Dr. Blaisdell intentionally inflicted emotional 10 distress by violating his medical duty and intentionally refusing to provide Wolinski with 11 his prescribed pain medication following his surgery, which caused Wolinski to suffer 12 severe emotional distress. 13 Yet the complaint contains no allegations that any other defendant who owed a duty 14 of care to Wolinski negligently caused him emotional distress nor committed conduct so 15 extreme as to exceed the bounds tolerated by a civilized community. Indeed, even as to 16 Dr. Blaisdell, there are no allegations that he was negligent in any manner, as Wolinski 17 specifically alleges that Dr. Blaisdell deliberately (not negligently) denied medication in 18 retaliation for Wolinski’s filing of inmate grievances. Thus, the infliction-of-emotional- 19 distress causes of action are dismissed, except for the claim of intentional infliction of 20 emotional distress against Dr. Blaisdell. 21 2. California Code of Regulations and CDCR Operations Manual 22 Wolinski claims the defendants defied prison procedures regarding medical care, 23 retaliatory actions, taking of personal property, transfers, housing, and education, all in 24 violation of California Code of Regulations, tit. 15, §§ 3481–3486, 3120(a), 3122(a), 3160, 25 3162, 3190, 3193(b), 3486, 3481(d), and 3999, as well as the CDCR Department 26 Operations Manual, Chapter 5, Article 53. The allegations that these provisions of 27 California regulatory law were violated are entirely conclusory and fail to state a claim. 28 See *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991) (holding that allegations must 1 be sufficiently clear “to put defendants fairly on notice of the claims against

them”); *Iqbal*, 2 556 U.S. at 678 (“Threadbare recitals of the elements of a cause of action, supported by 3 mere conclusory statements, do not suffice” to satisfy the plausibility standard to state a 4 claim.). Thus, they are dismissed. 5 3. California Constitution 6 Wolinski claims systemic due-process violations involving the taking of personal 7 property, attempted prison transfers, earning custody credits, denial of reasonable 8 accommodations in housing and education, and retaliation, all in violation of the California 9 Constitution, Art. I, §§ 3, 15, 17, and 19. (ECF 1, at 2, 7–8, 10, 15, 22, 24.) These state 10 Constitution-related allegations fail to state a claim over which this Court will accept 11 supplemental jurisdiction because they do not “put defendants fairly on notice of the claims 12 against them.” See *McKeever*, 932 F.2d at 798. For example, Article I, section 3 of the 13 California Constitution provides that state citizens “have the right to instruct their 14 representatives, petition government for redress of grievances, and assemble freely to 15 consult for the common good.” Cal. Const. Art. 1, § 3. Wolinski does not articulate how 16 any defendant has violated this article. Section 15 pertains to trial rights in criminal cases. 17 Cal. Const. Art. 1, § 15. Wolinski does identify how any allegations in the complaint 18 implicate that section. Section 17 states that “[c]ruel or unusual punishment may not be 19 inflicted or excessive fines imposed.” Cal. Const. Art. 1, § 17. Yet courts have recognized 20 that this provision does not provide a private right of action. See, e.g., *Quezada v. 21 California*, No. 12cv959-DAD (SAB), 2021 WL 2417119, at *5 (E.D. Cal. June 14, 2021) 22 (citing *Giraldo v. Dep’t of Corr. & Rehab.*, 168 Cal. App. 4th 231, 256 (2008)). Finally, 23 section 19 protects against government taking of property for public use without just 24 compensation. Cal. Const. Art. 1, § 19. Wolinski fails to allege his property was taken for 25 public use. 26 The claims based on the California Constitution are dismissed. 27 4. California Penal Code 28 Finally, Wolinski claims violations of his right to accurate, unforged, and unperjured 1 medical and prison records under California Penal Code § 118.1, as well as violations of 2 his right to review his inmate complaints under California Penal Code §§ 832.5 and 832.7. 3 (ECF 1, at 5, 26.) Section 118.1 criminalizes the filing of false police reports; section 832.5 4 requires establishment of procedures to investigate and maintain records of citizen 5 complaints; and section 832.7 relates to the confidentiality of police records. See Cal. Penal 6 Code §§ 118.1, 832.5, 832.7. In addition to the conclusory nature of the allegations 7 regarding these alleged statutory violations, Wolinski as a private citizen is unable to 8 enforce criminal statutes. See *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (“[I]n 9 American jurisprudence . . . a private citizen lacks a judicially cognizable interest in the 10 prosecution or nonprosecution of another.”). Thus, these Penal Code-related claims are 11 dismissed. 12 J. Other Stray References to Federal Law 13 In the complaint, Wolinski cites to various other federal laws, including: 20 U.S.C. 14 § 1070 (statement of purpose and authorization of PELL grants); 34 CFR § 690.6 (duration 15 of time to receive PELL grants); 18 U.S.C. § 1621 (criminalizing perjury); 42 U.S.C. 16 § 1997d (prohibiting retaliation for reporting conditions of confinement); 42 U.S.C. 17 § 12112 (prohibiting discrimination in employment); and 42 U.S.C. § 2000(e) (prohibiting 18 discrimination in education under Title VII

of the Civil Rights Act of 1964). In the unlikely event Wolinski intended these stray legal references to allege separate causes of action, they are all dismissed for being conclusory and failing to plausibly allege any cognizable legal claims.

CONCLUSION

Thus, the Court orders as follows: 1. Wolinski's motion to proceed in forma pauperis is GRANTED. 2. Wolinski's motion for an extension of time to file his trust account statement is DENIED as moot. He already filed that document, and it has been docketed. (See ECF 3.)

3. The Secretary of the California Department of Corrections and Rehabilitation, or that person's designee, must collect from Wolinski's prison trust account the \$350 filing fee owed in this case by garnishing monthly payments from his account in an amount equal to 20% of the preceding month's income and forwarding those payments to the Clerk of the Court each time the amount in the account exceeds \$10. See 28 U.S.C. § 1915(b)(2). 4. The Clerk of Court must serve a copy of this Order by U.S. Mail on Jeff Macomber, Secretary, California Department of Corrections and Rehabilitation,

Box 942883, Sacramento, California, 94283-0001.

5. All claims in the complaint are DISMISSED, except for the claims (1) against Dr. Blaisdell regarding Eighth Amendment denial of medical care, First Amendment retaliation, and state-law intentional infliction of emotional distress; and (2) against correctional counselor J. Cota and warden Rafael Acevedo for the good-credit-related Fourteenth Amendment due-process claim. See 28 U.S.C. §§ 1915(e)(2)(B)(i) & 1915A(b)(1). 6. By September 19, 2025, Wolinski must either: (a) notify the Court of his intent to proceed with only the surviving claims against defendant Dr. Blaisdell or (b) file a first amended complaint that cures the deficiencies noted above. Any amended complaint be complete by itself without reference to the original complaint. Defendants not named and any claim not re-alleged in an amended complaint will be considered waived. See S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc.*, 896 F.2d at 1546 (“[A]n amended pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims dismissed with leave to amend which are not re-alleged in an amended pleading may be “considered waived if not replied”). Dated: August 5, 2025 Hon. Andrew G. Schopler United States District Judge

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