

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, SAN JOSE DIVISION

In re CIM-SQ Transfer Cases

In re CIM-SQ Transfer Cases · No. 5:20-cv-06326-EJD · Decided May 19, 2025

SUMMARY

The United States District Court for the Northern District of California screened a prisoner civil-rights complaint arising from the transfer of inmates from California Institution for Men to San Quentin State Prison during the COVID-19 pandemic. The court dismissed claims against Steven Tharratt because he died before the action was filed and found a cognizable Eighth Amendment deliberate-indifference claim against Kathleen Allison. The court ordered service on Allison and stayed the case for purposes other than service.

CASE DETAILS

COURT	United States District Court for the Northern District of California, San Jose Division
WRITING FOR THE COURT	Edward J. Davila
JURISDICTION	United States District Court for the Northern District of California
DECIDED	May 19, 2025
DOCKET	5:20-cv-06326-EJD
DISPOSITION	other
PROCEDURAL POSTURE	A pro se California prisoner civil-rights complaint was screened under 28 U.S.C. § 1915A(a). The court dismissed claims against Steven Tharatt, found a cognizable Eighth Amendment claim against Kathleen Allison, and ordered service on Allison while staying the consolidated case for all other purposes.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915A(a)-(b), the court must screen a prisoner complaint seeking redress from a governmental entity or employee and dismiss claims that are frivolous, malicious, fail to state a claim, or seek monetary relief from an immune defendant. Pro se pleadings are liberally construed, and a complaint must contain sufficient factual matter to state a plausible claim for relief.
PRECEDENTIAL VALUE	Unknown; district-court order of service

PARTIES

Plaintiff v. Kathleen Allison, Steven Tharatt, CIM Medical Director/Executives, California Department of Corrections and Rehabilitation

TOPICS

prisoners rights

section 1983

service of process

civil procedure

cruel and unusual punishment

PRACTICE AREAS

civil rights

prisoner litigation

civil procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable Eighth Amendment deliberate-indifference claim against Kathleen Allison.
2. Whether claims could proceed against Steven Tharatt when he died before the action was filed.
3. Whether claims could proceed against unnamed executives who had not been identified.

HOLDINGS

1. Liberally construed, the complaint stated a plausible claim that Kathleen Allison was deliberately indifferent to plaintiff's health and safety needs in violation of the Eighth Amendment.
2. Claims against Steven Tharatt could not proceed because he died before the action was filed, and he was dismissed from the case.
3. Claims against the unnamed executives could not proceed in their present form, although plaintiff could later move to amend to identify additional defendants.

KEY QUOTATIONS

"Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity." (at 1)

"Liberally construed, plaintiff's allegations state a plausible claim for deliberate indifference to plaintiff's safety against Allison, in violation of the Eighth Amendment." (at 2)

"A party cannot maintain a suit on behalf of, or against, or join, a dead person, or in any other way make a dead person (in that person's own right, and not through a properly represented estate or successor) party to a federal lawsuit." (at 2)

FACTUAL BACKGROUND

Plaintiff, a California prisoner, alleged that defendants transferred more than 100 inmates, some infected with COVID-19, from California Institution for Men to San Quentin State Prison in May 2020. He alleged that the transfer caused a COVID-19 outbreak at San Quentin and that he contracted COVID-19 around May 30, 2020.

He sought damages and named CDCR Secretary Kathleen Allison, CDCR Medical Director Steven Tharatt, and unnamed medical directors or executives as defendants.

PROCEDURAL HISTORY

Plaintiff filed a civil-rights action concerning the transfer of prisoners from California Institution for Men to San Quentin State Prison during the COVID-19 pandemic. The action was consolidated with related prisoner-transfer cases under the lead matter, *In re CIM-SQ Transfer Cases*. The court screened the operative complaint, dismissed Tharatt because he died before the action was filed, declined to proceed against unnamed executives, permitted the claim against Allison to proceed, and ordered service through the CDCR e-service program.

DISPOSITION

other

CASES CITED

- *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)
- *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007)
- *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65, 1974 (2007)
- *West v. Atkins*, 487 U.S. 42, 48 (1988)
- *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008)
- *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)
- *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006)
- *Bullock v. Johnson*, No. CV 15-2070 PA (AS), 2018 WL 5880736, at *13 n.19 (C.D. Cal. Aug. 10, 2018), report and recommendation adopted, No. CV 15-2070 PA (AS), 2018 WL 4791089 (C.D. Cal. Oct. 3, 2018)
- *LN Mgmt., LLC v. JPMorgan Chase Bank, N.A.*, 957 F.3d

OPINION

1 2 3 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-07116-EJD; *Burroughs v. Allison*,
et 12 al. 13 14 INTRODUCTION 15 Plaintiff, a California prisoner, filed a pro se civil rights
action. Plaintiff alleged that 16 defendants violated his constitutional rights by transferring over
100 inmates, some of whom were 17 infected with COVID-19, from the California Institution for
Men (CIM) to San Quentin State 18 Prison (SQSP)1 in May 2020.

The case is now before the Court for screening pursuant to 28 19 U.S.C. § 1915A(a), and service
of the complaint on some defendants is ordered. Plaintiff will be 20 granted leave to proceed in
forma pauperis by separate order. 21 This case has been consolidated with cases in this district
related to the 2020 prisoner 22 transfer and related to the first case filed, No. 5:20-cv-06326-EJD,

which now has the caption “In 23 Re CIM-SQ Transfer Cases.” Pro se prisoner cases that are part of the consolidated matter are 24 stayed except for the purposes of service.

Service shall therefore proceed in plaintiff’s case as 25 ordered below, but the case will remain stayed for all other purposes. The docket for Case No. 24- 26 7116 and all other individual dockets have been closed. If plaintiff wishes to file any motions, he 27 1 must file them in Case No. 5:20-cv-06326-EJD and include his original case number, No. 24- 2 7116, on the left side of the heading.

3 STANDARD OF REVIEW 4 Federal courts must engage in a preliminary screening of cases in which prisoners seek 5 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 6 1915A(a).

The Court must identify cognizable claims or dismiss the complaint, or any portion of 7 the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief 8 may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” Id. 9 § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 10 F.2d 696, 699 (9th Cir.

1990). 11 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 12 statement need only give the defendant fair notice of what the.... claim is and the grounds upon 13 which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).

Although to 14 state a claim a complaint “does not need detailed factual allegations,... a plaintiff’s obligation to 15 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a 16 formulaic recitation of the elements of a cause of action will not do.... Factual allegations must 17 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 18 127 S. Ct.

1955, 1964-65 (2007) (citations omitted). A complaint must proffer “enough facts to 19 state a claim for relief that is plausible on its face.” Id. at 1974. 20 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a 21 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged 22 violation was committed by a person acting under the color of state law.

West v. Atkins, 487 U.S. 23 42, 48 (1988). 24 If a court dismisses a complaint for failure to state a claim, it should “freely give 25 leave” to amend “when justice so requires.” Fed. R. Civ. P. 15(a) (2). A court has discretion to 26 deny leave to amend due to “undue delay, bad faith or dilatory motive on the part of the movant, 27 repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the 1 opposing party by virtue of allowance of the

amendment, [and] futility of amendment.” 2 *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir.

2008). 3 LEGAL CLAIMS 4 Plaintiff names as defendants California Department of Corrections and Rehabilitation 5 (CDCR) secretary Kathleen Allison, CDCR Medical Director Steven Tharatt, and “CIM Medical 6 Director/Executives.” Dkt. No. 10 at 1. He alleges that the transfer of prisoners caused a COVID 7 outbreak at SQSP, see Dkt. No. 2 at 3, during which plaintiff contracted COVID-19 around May 8 30, 2020.

Dkt. No. 1 at 6. He seeks damages. 9 Liberally construed, plaintiff’s allegations state a plausible claim for deliberate 10 indifference to plaintiff’s safety against Allison, in violation of the Eighth Amendment. *Farmer v. 11 Brennan*, 511 U.S. 825, 837 (1994). 12 Plaintiff’s claims cannot proceed against Steven Tharratt.

The Court understands, as the 13 Attorney General has represented to another court in this district, that “[t]o the best of [the 14 Attorney General’s] knowledge, [Dr.] Tharratt died on August 20, 2020.” See Case No. 3:20-cv- 15 07845-CRB, Dkt. Nos. 37, 37-1.

The Court takes judicial notice pursuant to Federal Rule of 16 Evidence 201 of the filing in that case, which attaches Dr. Tharratt’s obituary published on the 17 California Department of Corrections and Rehabilitation website on October 6, 2020, available at 18 [https://www.cdcr.ca.gov/insidecdcr/2020/10/06/dr-robert-tharratt-longtime-cchcs-medical-](https://www.cdcr.ca.gov/insidecdcr/2020/10/06/dr-robert-tharratt-longtime-cchcs-medical-director-passes-away/) 19 [director-passes-away/](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 20 Cir. 2006) (federal courts “may take judicial notice of court filings and other matters of public 21 record”); *Bullock v. Johnson*, No. CV 15-2070 PA (AS), 2018 WL 5880736, at *13 n.19 (C.D. 22 Cal. Aug. 10, 2018), report and recommendation adopted, No. CV 15-2070 PA (AS), 2018 WL 23 4791089 (C.D.

Cal. Oct. 3, 2018) (taking judicial notice of CDCR obituary). 24 Dr. Tharratt’s death therefore preceded the filing of this action. See Dkt. No. 1. “[A] party 25 cannot maintain a suit on behalf of, or against, or join, a dead person, or in any other way make a 26 dead person (in that person’s own right, and not through a properly represented estate or 27 successor) party to a federal lawsuit.” *LN Mgmt., LLC v. JPMorgan Chase Bank, N.A.*, 957 F.3d 1 at the onset of this litigation and will be dismissed.

2 Nor can plaintiff’s claims proceed against the general, unnamed executives to whom he 3 refers. Plaintiff may later move to amend his complaint to name additional defendants. 4 CONCLUSION 5 1. Defendant Tharratt is DISMISSED. 6 2. Plaintiff has stated a cognizable claim against defendant Allison for violation of the 7 Eighth Amendment by deliberate indifference to his health and safety needs.

8 3. The Court orders that service on Allison shall proceed under the California 9 Department of Corrections and Rehabilitation's ("CDCR") e-service program for civil rights cases 10 from prisoners in the CDCR's custody: 11 In accordance with the program, the clerk is directed to serve on the CDCR via email the 12 following documents: the operative complaint (Dkt.

No. 10 in case 24-cv-07116-EJD), this Order 13 of Service, a CDCR Report of E-Service Waiver form, and a summons. The clerk also shall serve 14 a copy of this order on the plaintiff. 15 No later than 40 days after service of this order via email on the CDCR, the CDCR shall 16 provide the court a completed CDCR Report of E-Service Waiver advising the court which 17 defendant(s) listed in this order will be waiving service of process without the need for service by 18 the USMS and which defendant(s) decline to waive service or could not be reached.

The CDCR 19 also shall provide a copy of the CDCR Report of E-Service Waiver to the California Attorney 20 General's Office which, within 21 days, shall file with the Court a waiver of service of process for 21 the defendant(s) who are waiving service. 22 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for each 23 defendant who has not waived service according to the CDCR Report of E-Service Waiver a 24 USM-285 Form.

The clerk shall provide to the USMS the completed USM-285 forms and copies 25 of this order, the summons and the operative complaint for service upon each defendant who has 26 not waived service. The clerk also shall provide to the USMS a copy of the CDCR Report of E- 27 Service Waiver.] requires them to cooperate in saving unnecessary costs of service of the summons and complaint.

2 Pursuant to Rule 4, if defendants, after being notified of this action and asked by the Court, on 3 || behalf of plaintiff, to waive service of the summons, fail to do so, they will be required to bear the 4 || cost of such service unless good cause can be shown for their failure to sign and return the waiver 5 form. 6 5. All communications by plaintiff with the Court must be served on defendants' 7 || counsel by mailing a true copy of the document to defendants' counsel.

The Court may disregard 8 any document which a party files but fails to send a copy of to his opponent. Until defendants' 9 || counsel has been designated, plaintiff may mail a true copy of the document directly to 10 || defendants, but once defendants are represented by counsel, all documents must be mailed to 11 counsel rather than directly to defendants.

12 6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the 13 Court informed of any change of address and must comply with the Court's orders in a timely 14 || fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant 3 || to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every a 16 || pending case every time he is moved to a new facility.

17 7. Any motion for an extension of time must be filed no later than the deadline sought Z 18 || to
be extended and must be accompanied by a showing of good cause. Plaintiff is cautioned that 19 ||
he must include the case name and case number for this case on any document he submits to the
20 || Court for consideration in this case. 21 8.

The case will remain stayed for all purposes other than service of the complaint on 22 ||
defendants. 23 IT IS SO ORDERED. 24 || Dated: May 19, 2025 25 26 EDWARD J. DAVILA 27
United States District Judge 28