

**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

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-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 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 Tharratt, 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-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