

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Porter v. Rivas

No. 1:22-cv-00105-CDB (PC) (E.D. Cal. Mar. 1, 2023) · No. 1:22-cv-00105-CDB (PC) · Decided March 1, 2023

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Defendant T. Cisneros and all claims except Plaintiff Larry James Porter’s deliberate-indifference-to-serious-medical-needs claim against Defendant O. Rivas under 42 U.S.C. § 1983. The recommendations also direct the Clerk to randomly assign a district judge and provide a 14-day period for objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 1, 2023
DOCKET	1:22-cv-00105-CDB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations in a prisoner civil-rights action under 42 U.S.C. § 1983 following screening of the complaint. The magistrate judge recommended dismissal of the noncognizable claims and Defendant T. Cisneros, while allowing deliberate-indifference claims against Defendant O. Rivas to proceed.
STANDARD OF REVIEW	Mandatory screening of a prisoner civil-rights complaint under 28 U.S.C. § 1915A and review for failure to state a cognizable claim.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- prisoners rights
- section 1983
- pleadings
- civil procedure
- health law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the complaint stated any cognizable § 1983 claim against Defendant T. Cisneros or any defendant other than O. Rivas.
2. Whether the action should proceed solely on Plaintiff's deliberate-indifference-to-serious-medical-needs claims against O. Rivas after Plaintiff declined to amend.

HOLDINGS

1. The court recommended dismissing Defendant T. Cisneros and all claims except Plaintiff's deliberate-indifference-to-serious-medical-needs claims against Defendant O. Rivas.

KEY QUOTATIONS

“The Court RECOMMENDS that: 1. Defendant T. Cisneros be DISMISSED; and, 2. The claims in Plaintiff's complaint be DISMISSED, except for its deliberate indifference to serious medical needs claims against Defendant Rivas, pursuant to 42 U.S.C. § 1983; and 3. The Clerk of the Court is directed to randomly assign a district judge to this action.” (at 1)

“Failure to file objections within the specified time may result in waiver of rights on appeal.” (at 1)

FACTUAL BACKGROUND

Plaintiff Larry James Porter is a state prisoner who brought a civil-rights action concerning alleged deliberate indifference to serious medical needs. The court found that the complaint stated a cognizable claim against Defendant O. Rivas but failed to state any other cognizable claim against any other named defendant. Plaintiff declined to amend and elected to proceed only on the cognizable claims against Rivas.

PROCEDURAL HISTORY

Plaintiff, a state prisoner proceeding pro se, filed this § 1983 action. On February 7, 2023, the court screened the complaint, found a cognizable deliberate-indifference claim against Rivas, and found no other cognizable claims. Plaintiff declined to amend and agreed to proceed only on the cognizable claims. The magistrate judge then issued findings and recommendations to dismiss Cisneros and all claims other than the deliberate-indifference claims against Rivas, subject to a 14-day objection period and assignment of a district judge.

DISPOSITION

other

CASES CITED

- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

(PC) Porter v. Rivas

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 LARRY JAMES PORTER, Case No. 1:22-cv-00105-CDB (PC) 12 Plaintiff,

FINDINGS AND RECOMMENDATIONS TO

13 v. DISMISS CERTAIN CLAIMS AND

DEFENDANT

14 O. RIVAS, et al.,

14-DAY OBJECTION PERIOD

15 Defendants. Clerk of the Court to Assign District Judge 16 17 Plaintiff Larry James Porter is a
state prisoner proceeding pro se in this civil rights action. 18 On February 7, 2023, the Court
issued its First Screening Order, finding Plaintiff's 19 complaint states a cognizable claim of
deliberate indifference to serious medical needs against 20 Defendant Rivas. (Doc. 16 at 5-7.) The
Court further found that Plaintiff failed to state any other 21 cognizable claim against any other
named Defendant. (Id.) The Court therefore directed Plaintiff 22 to file a first amended complaint
curing the deficiencies in his pleading or to notify the Court that 23 he wishes to proceed only on
the claims found cognizable. (Id. at 7-9.) 24 On February 23, 2022, Plaintiff filed a notice stating
that he does not wish to amend his 25 complaint and is "agreeable to proceeding only with [his]
cognizable deliberate indifference to 26 serious medical needs claim against Defendant Rivas."
(Doc. 17.) 27 Accordingly, and for the reasons set forth in the Court's screening order (Doc. 16),
the Court RECOMMENDS that: 1 1. Defendant T. Cisneros be DISMISSED; and, 2 2. The claims
in Plaintiff's complaint be DISMISSED, except for its deliberate 3 indifference to serious medical
needs claims against Defendant Rivas, pursuant to 42 4 U.S.C. § 1983; and 5 3. The Clerk of the
Court is directed to randomly assign a district judge to this action. 6 These Findings and
Recommendations will be submitted to the United States District 7 | Judge assigned to this case,
pursuant to 28 U.S.C. § 636(b)(1). Within 14 days of the date of 8 || service of these Findings and
Recommendations, Plaintiff may file written objections with the 9 | Court. The document should
be captioned, "Objections to Magistrate Judge's Findings and 10 | Recommendations." Failure to
file objections within the specified time may result in waiver of 11 | rights on appeal. Wilkerson v.
Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. 12 | Sullivan, 923 F.2d 1391, 1394
(9th Cir. 1991)). 13 | IT IS SO ORDERED. "Dated: _Mareh 1, 2023 | Wr bo

15 UNITED STATES MAGISTRATE JUDGE

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