

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Vitaly V. Kononov v. Leahy, et al.

Kononov v. Leahy · No. 2:22-CV-1916-DAD-DMC-P · Decided July 16, 2025

OPINION

(PC) Kononov v. Sacramento County Sheriff Dept.

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 VITALY V. KONONOV, No. 2:22-CV-1916-DAD-DMC-P

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 LEAHY, et al., 15 Defendants. 16 17 Plaintiff, a prisoner proceeding pro se, brings this civil
rights action pursuant to 42 18 U.S.C. § 1983. Pending before the Court is Defendants’ motion to
dismiss, ECF No. 32. Plaintiff 19 has not filed an opposition. 20 In considering a motion to
dismiss, the Court must accept all allegations of 21 material fact in the complaint as true. See
Erickson v. Pardus, 551 U.S. 89, 93-94 (2007). The 22 Court must also construe the alleged facts
in the light most favorable to the plaintiff. See Scheuer 23 v. Rhodes, 416 U.S. 232, 236 (1974);
see also Hosp. Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 24 738, 740 (1976); Barnett v. Centoni,
31 F.3d 813, 816 (9th Cir. 1994) (per curiam). All 25 ambiguities or doubts must also be resolved
in the plaintiff's favor. See Jenkins v. McKeithen, 26 395 U.S. 411, 421 (1969). However, legally
conclusory statements, not supported by actual 27 factual allegations, need not be accepted. See
Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949-50 (2009). 28 In addition, pro se pleadings are held to a
less stringent standard than those drafted by lawyers. 1 See Haines v. Kerner, 404 U.S. 519, 520
(1972). 2 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement 3 of
the claim showing that the pleader is entitled to relief” to “give the defendant fair notice of 4 what
the . . . claim is and the grounds upon which it rests.” Bell Atl. Corp v. Twombly, 550 U.S. 5 544,
555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). However, to survive 6 dismissal
for failure to state a claim under Rule 12(b)(6), a complaint must contain more than “a 7 formulaic
recitation of the elements of a cause of action;” it must contain factual allegations 8 sufficient “to
raise a right to relief above the speculative level.” Id. at 555-56. The complaint 9 must contain
“enough facts to state a claim to relief that is plausible on its face.” Id. at 570. “A 10 claim has
facial plausibility when the plaintiff pleads factual content that allows the court to draw 11 the

reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S. Ct. 12 at 1949. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more 13 than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. 14 at 556). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, 15 it ‘stops short of the line between possibility and plausibility for entitlement to relief.” *Id.* 16 (quoting *Twombly*, 550 U.S. at 557). 17 In deciding a Rule 12(b)(6) motion, the Court generally may not consider materials 18 outside the complaint and pleadings. See *Cooper v. Pickett*, 137 F.3d 616, 622 (9th Cir. 1998); 19 *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994). The Court may, however, consider: (1) 20 documents whose contents are alleged in or attached to the complaint and whose authenticity no 21 party questions, see *Branch*, 14 F.3d at 454; (2) documents whose authenticity is not in question, 22 and upon which the complaint necessarily relies, but which are not attached to the complaint, see 23 *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001); and (3) documents and materials 24 of which the court may take judicial notice, see *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 25 1994). 26 Finally, leave to amend must be granted “[u]nless it is absolutely clear that no 27 amendment can cure the defects.” *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per 28 curiam); see also *Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc).

1 I. BACKGROUND

2 A. Procedural History 3 Plaintiff initiated this action with a pro se complaint. See ECF No. 1. Plaintiff 4 then filed a first amended complaint as of right on January 23, 2023. See ECF No. 8. On July 31, 5 2023, the Court issued an order dismissing Plaintiff’s first amended complaint with leave to 6 amend. See ECF No. 11. Plaintiff filed a second amended complaint pursuant to the Court’s 7 order. See ECF No. 12. On June 14, 2024, the Court issued an order addressing the sufficiency of 8 the second amended complaint. See ECF No. 15. In that order, the Court determined as follows: 9 The Court finds that Plaintiff’s second amended complaint states cognizable conditions-of-confinement claims under the Eighth 10 Amendment against Defendants Leahy and Vice in Claim I and Claim II. Plaintiff’s second amended complaint, however, suffers a number of 11 defects. First, Plaintiff has failed to allege facts to establish the municipal liability of either SCSD [Sacramento County Sheriff’s Department] or 12 RCCC [Rio Consumnes Correctional Center], both of which are arms of Sacramento County. Second, Plaintiff has failed to allege facts to establish 13 the supervisory liability of Sheriff Jones. Third, as to Claim III, Plaintiff has not alleged facts to establish a link between any named defendant and 14 Plaintiff’s claim of retaliation. 15 ECF No. 15, pg. 4. 16 Plaintiff was provided an opportunity to file a third amended complaint within 30 17 days of the date of the Court’s order and advised that, if no third amended complaint was filed 18 within the time permitted therefor, the action would proceed on the second amended complaint as 19 to Plaintiff’s claims in Claim I and Claim II against Defendants Leahy and Vice, and that the 20 Court would recommend that all other claims and defendants would be dismissed. See *id.* at 6-7. 21 As of August 1, 2024, Plaintiff had not filed a

third amended complaint and the Court issued 22 findings and recommendations that Plaintiff's Claim III be dismissed and that Defendants Jones, 23 SCSD, and RCCC be dismissed. See ECF No. 16. The findings and recommendations were 24 adopted in full by the District Judge on November 14, 2024. See ECF No. 24. On November 18, 25 2024, the Court directed service of the second amended complaint on Defendants Leahy and 26 Vice. See ECF No. 25. After waiving service, Defendants Leahy and Vice responded to the 27 second amended complaint by way of the pending unopposed motion to dismiss filed on May 19, 28 2025. See ECF No. 32. 1 B. Plaintiff's Allegations1 2 As explained above, this action currently proceeds on Plaintiff's second amended 3 complaint as to Claim I and Claim II against Defendants Leahy and Vice. See ECF No. 12. 4 Defendants are alleged to be jail officials at RCCC. See id. at 2. 5 Claim I 6 In his first claim, Plaintiff alleges that various jail officials at RCCC deprived 7 Plaintiff of his right to the dayroom, showers, and hygiene. See id. at 3. Plaintiff references the 8 "Sacramento County Sheriff's Office Correctional Services Inmate Handbook," which states that 9 each housing pod must be scheduled for a minimum of 17 hours per week for recreation. Id. at 3, 10 12. Plaintiff claims that Defendants Leahy and Vice denied, deprived, and refused him access to 11 the dayroom, showers, telephones, and television for three weeks from August 4, 2023, to August 12 25, 2023. See id. at 3. Plaintiff claims to have a skin rash "all over [his] body" because of this 13 treatment. See id. Plaintiff refers to a "No Out of Cell Time Log" that he has kept, detailing the 14 days on which jail staff denied him dayroom access. See id. at 3, 7-10. 15 Claim II 16 In his second claim, Plaintiff alleges that he was denied access to the yard, outdoor 17 recreation, and exercise. See id. at 4. Plaintiff refers again to the "Sacramento County Sheriff's 18 Office Correctional Services Inmate Handbook," which states that "county inmates shall receive 19 at least three hours of outdoor recreation per calendar week." See id. According to the complaint, 20 Defendants Leahy and Vice deprived Plaintiff of outdoor recreation and denied and refused the 21 opportunity to submit grievances and appeals for the issue. See id. Plaintiff claims that these 22 defendants denied, refused, and deprived him of his "prisoners [sic] rights." Id. 23 /// 24 /// 25 /// 26 /// 27 28 1 The Court's summary focuses on the remaining Claim I and Claim II.

1 II. DISCUSSION

2 In their motion to dismiss, Defendants argue that Plaintiff's allegations are 3 insufficient to assert an Eighth Amendment claim. See ECF No. 32-1, pgs. 5-6. Defendants also 4 contend that Plaintiff's allegations are insufficient because they do not establish a causal link 5 between either remaining defendant and a violation of Plaintiff's Eighth Amendment rights. For 6 the reasons discussed below, the Court agrees that Plaintiff does not state a cognizable conditions- 7 of-confinement claim under the Eighth Amendment.2 8 The treatment a prisoner receives in prison and the conditions under which the 9 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel 10 and unusual punishment. See *Helling v. McKinney*, 509 U.S. 25, 31 (1993); *Farmer v. Brennan*, 11 511 U.S. 825, 832 (1994). The Eighth Amendment "... embodies broad and idealistic concepts 12 of dignity, civilized standards, humanity, and decency."

Estelle v. Gamble, 429 U.S. 97, 102-13 (1976). Conditions of confinement may, however, be harsh and restrictive. See *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with “food, clothing, shelter, sanitation, medical care, and personal safety.” *Toussaint v. McCarthy*, 680 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when two requirements are met: (1) objectively, the official’s act or omission must be so serious such that it results in the denial of the minimal civilized measure of life’s necessities; and (2) subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of inflicting harm. See *Farmer*, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison official must have a “sufficiently culpable mind.” See *id.* “The Constitution ‘does not mandate comfortable prisons.’” *Farmer*, 511 U.S. at 832 (quoting *Rhodes*, 452 U.S. at 349); see also *Hallett v. Morgan*, 296 F.3d 732, 745 (9th Cir. 2002); *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982), abrogated on other grounds by *Sandin v. Conner*, 515 U.S. 472 (1995). Conditions of confinement may, consistent with the 26 2 Because the Court finds that the facts alleged in the second amended complaint 27 and documents attached thereto upon which it relies do not state a claim for relief, it is not necessary to address whether Plaintiff has alleged facts to show a sufficient causal connection to 28 either remaining defendant. 1 Constitution, be restrictive and harsh. See *Rhodes*, 452 U.S. at 347; *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006); *Osolinski v. Kane*, 92 F.3d 934, 937 (9th Cir. 1996); *Jordan v. Gardner*, 986 F.2d 1521, 1531 (9th Cir. 1993) (en banc). Prison officials must, however, provide 4 prisoners with “food, clothing, shelter, sanitation, medical care, and personal safety.” *Toussaint*, 5 801 F.2d at 1107; see also *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000); *Wright v. Rushen*, 642 F.2d 1129, 1132-33 (9th Cir. 1981). 7 When determining whether the conditions of confinement meet the objective 8 prong of the Eighth Amendment analysis, the court must analyze each condition separately to 9 determine whether that specific condition violates the Eighth Amendment. See *Toussaint*, 801 10 F.2d at 1107; *Wright*, 642 F.2d at 1133. “Some conditions of confinement may establish an 11 Eighth Amendment violation ‘in combination’ when each would not do so alone, but only when 12 they have a mutually enforcing effect that produces the deprivation of a single, identifiable human 13 need such as food, warmth, or exercise – for example, a low cell temperature at night combined 14 with a failure to issue blankets.” *Wilson v. Seiter*, 501 U.S. 294, 304 (1991); see also *Thomas v. Ponder*, 611 F.3d 1144, 1151 (9th Cir. 2010); *Osolinski*, 92 F.3d at 938-39; *Toussaint*, 801 F.2d at 16 1107; *Wright*, 642 F.2d at 1133. When considering the conditions of confinement, the court 17 should also consider the amount of time to which the prisoner was subjected to the condition. See 18 *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978); *Hearns v. Terhune*, 413 F.3d 1036, 1042 (9th Cir. 19 2005). 20 Defendants argue that Plaintiff’s second amended complaint, when considered in 21 conjunction with attached documents upon which the second amended complaint necessarily 22 relies, fails to allege a cognizable conditions-of-confinement claim under the Eighth 23 Amendment. See ECF No. 32-1, pg. 5. The Court agrees. 24 Plaintiff alleges that Defendants

denied Plaintiff's request for time outside his 25 cell. See *id.* The Court may consider the time log Plaintiff attaches to the second amended 26 complaint because the log is a document whose contents are alleged in the complaint and whose 27 authenticity no party questions.³ See Branch, 14 F.3d at 454. The log, which was prepared by 28 3 For purposes of their motion to dismiss, Defendants admit the veracity of Plaintiff's time log. 1 Plaintiff to document his requests for time outside his cell, documents multiple times and dates in

2 August 2023 on which Plaintiff was denied dayroom access by different officers. See ECF No. 12

3 at 7- 10. Except for August 14, 2023, however, Plaintiff alleges that he was denied permission to 4 leave his cell at particular times for periods ranging from minutes to hours. See *id.* at 8-10. In the 5 log, Plaintiff documents denial of requests for dayroom privileges at specific times on twenty- 6 three instances. See *id.* As to August 14, 2023, the log prepared by Plaintiff and attached to the 7 second amended complaint suggests that Plaintiff was not allowed any dayroom access that day. 8 The Eighth Amendment is violated only when, objectively, the official's act or 9 omission is so serious that it results in the denial of the minimal civilized measure of life's 10 necessities. See *Farmer*, 511 U.S. at 834. Here, Defendants argue that the denial of permission to 11 leave plaintiff cell at specific times requested by Plaintiff does not indicate that Plaintiff was 12 denied all access to time outside his cell during August 2023. According to Defendants, 13 Plaintiff's log shows, at best, only that Plaintiff was not allowed out of his cell during the specific 14 times he wanted, not that all time outside his cell was completely denied over the month-long 15 time period. See ECF No. 32-1, pg. 6. 16 Defendants conclude that the facts alleged do not show an objectively significant denial of 17 life's necessities and that the single alleged denial of time outside Plaintiff's cell on August 14, 18 2023, does not amount to a constitutional violation. See *id.* The Court agrees that the temporary 19 denial of time outside of Plaintiff's cell is not, objectively, a substantial deprivation of Plaintiff's 20 Eighth Amendment rights where, as here, there is no allegation of medical effects resulting from 21 denial of time outside of Plaintiff's cell. See *Norwood v. Vance*, 591 F.3d 1062, 1070 (9th Cir. 22 2010); *Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998). 23 /// 24 /// 25 /// 26 /// 27 /// 28 ///

1 II. CONCLUSION

2 Based on the foregoing, the undersigned recommends that Defendants' unopposed 3 || motion to dismiss, EFC No. 32, be GRANTED and that this action be dismissed with prejudice 4 | for failure to state a claim upon which relief can be granted. 5 These findings and recommendations are submitted to the United States District 6 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 7 || after being served with these findings and recommendations, any party may file written 8 || objections with the court. Responses to objections shall be filed within 14 days after service of 9 || objections. Failure to file objections within the specified time may waive the right to 10 || appeal. See *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). 1] 12 | Dated: July 15, 2025 Ss..c0_,

13 DENNIS M. COTA

14 UNITED STATES MAGISTRATE JUDGE

15 16 17 18 19 20 21 22 23 24 25 26 27 28

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