

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Larry Wyane Palsey, Jr. v. Pat Horn, et al.

Palsey v. Horn · No. 1:25-cv-00682-HBK (PC) · Decided October 9, 2025

SUMMARY

The document contains findings and recommendations from the United States District Court for the Eastern District of California in a prisoner civil-rights action brought under 42 U.S.C. § 1983. The magistrate judge recommends dismissing the complaint without prejudice under 28 U.S.C. § 1915A for failure to state a claim, while granting leave to amend. The recommendation addresses official-capacity claims, supervisory liability, alleged medical deliberate indifference, and related state-law claims.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	October 9, 2025
DOCKET	1:25-cv-00682-HBK (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A pro se state prisoner proceeding in forma pauperis brought a 42 U.S.C. § 1983 action concerning alleged inadequate medical care. After the magistrate judge previously screened the complaint and identified deficiencies, Plaintiff filed a pleading construed as a notice to stand on the complaint. The magistrate judge issued findings and recommendations recommending dismissal without prejudice under 28 U.S.C. § 1915A and leave to amend.
STANDARD OF REVIEW	At PLRA screening, the court accepts factual allegations as true, construes a pro se pleading liberally, and resolves doubts in the plaintiff's favor, but need not accept conclusory allegations, unreasonable inferences, or unwarranted factual deductions. A complaint must contain sufficient factual matter to state a facially plausible claim under Federal Rule of Civil Procedure 8 and Ashcroft v. Iqbal.

TOPICS

prisoners rights

section 1983

pleadings

civil procedure

eleventh amendment immunity

PRACTICE AREAS

prisoner civil rights

constitutional law

federal civil procedure

medical malpractice

QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable claim under 28 U.S.C. § 1915A and Federal Rule of Civil Procedure 8.
2. Whether the official-capacity claims for monetary damages were barred by the Eleventh Amendment.
3. Whether the complaint adequately alleged personal participation or supervisory liability by Warden Pat Horn under 42 U.S.C. § 1983.
4. Whether the allegations against Ho and Freeman plausibly stated an Eighth Amendment deliberate-indifference claim concerning medical care.
5. Whether the asserted state-law medical-malpractice claims were subject to dismissal for failure to allege compliance with California's Government Claims Act.

HOLDINGS

1. Claims against the defendants in their official capacities seeking monetary damages are treated as claims against the State and are barred by the Eleventh Amendment.
2. The complaint failed to state a claim against Warden Horn because it alleged liability solely based on his supervisory position and did not allege personal participation, direction, knowledge, or failure to prevent a constitutional violation.
3. The complaint failed to state an Eighth Amendment deliberate-indifference claim against Ho or Freeman because it lacked specific facts showing their knowledge of and disregard for a substantial risk of serious harm and instead alleged conclusions, delay, misdiagnosis, or possible malpractice.
4. At the screening stage, Plaintiff's allegation that Freeman was a contracted physician providing medical care for CDCR was sufficient to treat Freeman as a state actor for purposes of § 1983.
5. The state-law claims were subject to dismissal because the complaint did not allege compliance with the California Government Claims Act's presentment and exhaustion requirements.

KEY QUOTATIONS

"The sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the plausibility standard." (at 2)

"There is no respondeat superior liability under section 1983." (at 5)

“It is the physician’s function within the state system, not the precise terms of his employment, that determines whether his actions can fairly be attributed to the State.” (at 6)

“It is only when an official both recognizes and disregards a risk of substantial harm that a claim for deliberate indifference exists.” (at 8)

FACTUAL BACKGROUND

Plaintiff, a state prisoner housed at Kern Valley State Prison, alleged that he underwent carpal tunnel surgery, developed gangrene, and ultimately had two fingers amputated. He alleged that Physician Assistant Chen Ho delayed or failed to provide appropriate treatment and that outside physician Dr. Freeman performed surgery on the wrong wrist. He sued Warden Pat Horn, Ho, and Freeman in their individual and official capacities, asserting constitutional violations and seeking \$2.5 million in damages.

PROCEDURAL HISTORY

Plaintiff filed an unsigned complaint, which was struck, and then filed the operative complaint on July 9, 2025. The court previously screened the complaint, found no cognizable constitutional claim, and gave Plaintiff options including amendment, standing on the complaint, or voluntary dismissal. Plaintiff instead filed a motion asserting that the complaint was sufficient; the court construed it as a notice to stand on the complaint and recommended dismissal without prejudice with leave to amend. The recommendation was subject to district-judge review after a fourteen-day objection period.

DISPOSITION

other

REMAND INSTRUCTIONS

The magistrate judge recommended that the complaint be dismissed without prejudice under § 1915A and that Plaintiff be granted thirty days from the district court’s adoption of the findings and recommendations to file an amended complaint.

CASES CITED

- Jenkins v. McKeithen, 395 U.S. 411, 421 (1969)
- Bernhardt v. Los Angeles County, 339 F.3d 920, 925 (9th Cir. 2003)
- Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981)
- Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Lopez v. Smith, 203 F.3d 1122, 1127-29, 1131 n.13 (9th Cir. 2000) (en banc)
- Lucas v. Department of Corrections, 66 F.3d 245, 248 (9th Cir. 1995)

- *Pliler v. Ford*, 542 U.S. 225, 231 (2004)
- *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 527 (9th Cir. 1983)
- *Sea Ranch Ass'n v. California Coastal Zone Conservation Commission*, 537 F.2d 1058, 1061 (9th Cir. 1976)
- *Alabama v. Pugh*, 438 U.S. 781, 782 (1978)
- *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100 (1984)
- *Kentucky v. Graham*, 473 U.S. 159, 169 (1985)
- *Park v. Thompson*, 851 F.3d 910, 921 (9th Cir. 2017)
- *West v. Atkins*, 487 U.S. 42, 54-56 (1988)
- *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)
- *Starr v. Baca*, 652 F.3d 1202, 1206-07 (9th Cir. 2011)
- *Estelle v. Gamble*, 429 U.S. 97, 104-07 (1976)
- *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992)
- *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc)
- *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014)
- *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)
- *Sandoval v. County of San Diego*, 985 F.3d 657, 668 (9th Cir. 2021)
- *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004)
- *Hamby v. Hammond*, 821 F.3d 1085, 1092 (9th Cir. 2016)
- *Lemire v. California Department of Corrections & Rehabilitation*, 726 F.3d 1062, 1074, 1082 (9th Cir. 2013)
- *Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012)
- *Shapley v. Nevada Board of State Prison Commissioners*, 766 F.2d 404, 407 (9th Cir. 1985)
- *Peralta v. Dillard*, 744 F.3d 1076, 1086 (9th Cir. 2014) (en banc)
- *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)
- *Cervantes v. Elsen*, 2023 WL 3483292 (N.D. Cal. May 15, 2023)
- *Valenzuela v. Monson*, 2020 WL 1812043, at *2 (D. Ariz. Apr. 8, 2020)
- *Fisher v. Washington State Department of Corrections*, 2019 WL 1745086, at *1 (W.D. Wash. Apr. 18, 2019)
- *Walker v. Muniz*, 2019 WL 2359229, at *4 (N.D. Cal. June 4, 2019)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
- *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996)
- *McIntosh v. City of Los Angeles*, 2005 U.S. Dist. LEXIS 53641, at *5 (C.D. Cal. July 21, 2005)
- *Hallett v. Morgan*, 296 F.3d 732, 745-46 (9th Cir. 2002)
- *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 627 (9th Cir. 1988)
- *Acri v. Varian Associates, Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997)
- *Cervantez v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011)
- *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 LARRY WYANE PALSEY, JR., Case No. 1:25-cv-00682-HBK (PC) 12
Plaintiff, ORDER TO RANDOMLY ASSIGN A DISTRICT JUDGE 13 v. FINDINGS AND
RECOMMENDATIONS TO 14 PAT HORN, et al., DISMISS COMPLAINT WITHOUT
PREJUDICE AND LEAVE TO FILE 15 Defendants. AMENDED COMPLAINT1 16 (Doc.

No. 9) 17 FOURTEEN-DAY OBJECTION PERIOD 18 19 Pending before the Court for screening
under 28 U.S.C. § 1915A is Plaintiff's Complaint. 20 (Doc. No. 9, "Complaint") filed on July 9,
2025. For the reasons set forth below, the undersigned 21 recommends the district court dismiss
the Complaint without prejudice with leave to file an 22 amended complaint. 23 SCREENING
REQUIREMENT 24 A plaintiff who commences an action while in prison is subject to the Prison
Litigation 25 Reform Act ("PLRA"), which requires, inter alia, the court to screen a complaint that
seeks relief 26 against a governmental entity, its officers, or its employees before directing service
upon any 27 1 This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B)
and Local Rule 302 28 (E.D.

Cal. 2022). 1 defendant. 28 U.S.C. § 1915A. This requires the court to identify any cognizable
claims and 2 dismiss the complaint, or any portion, if is frivolous or malicious, if it fails to state a
claim upon 3 which relief may be granted, or if it seeks monetary relief from a defendant who is
immune from 4 such relief. See 28 U.S.C. §§ 1915A(b)(1), (2). 5 At the screening stage, the court
accepts the factual allegations in the complaint as true, 6 construes the complaint liberally, and
resolves all doubts in the plaintiff's favor.

Jenkins v. 7 McKeithen, 395 U.S. 411, 421 (1969); Bernhardt v. L.A. County, 339 F.3d 920, 925
(9th Cir. 8 2003). A court does not have to accept as true conclusory allegations, unreasonable
inferences, or 9 unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,
624 (9th Cir. 10 1981). Critical to evaluating a constitutional claim is whether it has an arguable
legal and factual 11 basis.

See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989). 12 The Federal Rules of Civil
Procedure require only that a complaint include "a short and 13 plain statement of the claim
showing the pleader is entitled to relief...." Fed. R. Civ. P. 8(a)(2). 14 Nonetheless, a claim must be
facially plausible to survive screening. This requires sufficient 15 factual detail to allow the court
to reasonably infer that each named defendant is liable for the 16 misconduct alleged.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Moss v. U.S. Secret Service, 17 572 F.3d 962, 969
(9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not 18 sufficient, and
mere consistency with liability falls short of satisfying the plausibility standard. 19 Iqbal, 556 U.S.
at 678; Moss, 572 F.3d at 969.

Although detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice,” *Iqbal*, 556 U.S. at 678 (citations omitted), and courts “are not required to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 23 2009) (internal quotation marks and citation omitted).

If an otherwise deficient pleading can be remedied by alleging other facts, a pro se litigant is entitled to an opportunity to amend their complaint before dismissal of the action. See *Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v. Department of Corr.*, 66 F.3d 27 245, 248 (9th Cir. 1995).

However, it is not the role of the court to advise a pro se litigant on how to cure the defects. Such advice “would undermine district judges’ role as impartial decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); see also *Lopez*, 203 F.3d at 1131 n.13. 3 BACKGROUND AND SUMMARY OF OPERATIVE PLEADING 4 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, initiated this action by 5 filing a civil rights complaint under 42 U.S.C. § 1983 in Eastern District of California on July 9, 6 2025.2 (Doc.

No. 9). On July 24, 2025, the undersigned screened Plaintiff’s Complaint and 7 found that it failed to state any cognizable constitutional claim. (See Doc. No. 15). The Court 8 advised Plaintiff of the pleading deficiencies and applicable law and afforded Plaintiff the 9 opportunity to elect one of the following three options: (1) file an amended complaint; (2) file a 10 notice to stand on the current Complaint subject to the undersigned recommending the district 11 court dismiss the Complaint for the reasons stated in the screening order; or (3) file a notice of 12 voluntary dismissal.

(Id. at 9-10).3 13 On August 25, 2025, as opposed to selecting one of the three options, Plaintiff filed a 14 pleading titled “Motion to Grant Petition for Statement of Claim.” (“Motion” Doc. No. 18). In 15 his pleading, Plaintiff alleges no additional facts to support any of the claims made in his 16 Complaint. (See Doc. No. 18). Instead, Plaintiff attaches his screened Complaint and states that 17 he “did include sufficient factual allegations to satisfy each element of [his] claim” in his 18 Complaint.

(Id. at 5). Because Plaintiff makes no new allegations in the pleading and contends 19 the Complaint did state a claim, the Court construes the pleading as a Notice to Stand on his 20 Complaint.4 21 The events giving rise to the Complaint occurred while Plaintiff was housed at California 22 Department of Corrections and Rehabilitation (“CDCR”) Kern Valley State Prison facility 23 (“KVSP”).

(See generally Doc. No. 9). Plaintiff brings this action against the following 24 25 2 The Court struck the initial complaint which was unsigned. (Doc. No. 6). 3 All document and page numbers

are to the respective pleadings' document number and page number as 26 reflected on the Court's Case Management and Electronic Filing System (CM/ECF). 4 A motion's "nomenclature is not controlling." *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 527 27 (9th Cir.

1983) (quoting *Sea Ranch Ass'n v. Cal. Coastal Zone Conservation Comm'ns*, 537 F.2d 1058, 1061 (9th Cir. 1976)). Instead, we "construe [the motion], however styled, to be the type proper for the 28 relief requested." Id. 1 Defendants in both their individual and official capacities: (1) Pat Horn (Warden, KVSP), (2) 2 Chen Ho (Physician Assistant, KVSP), and (3) Dr. Freeman (Surgeon, Adventist Hospital).

(Id. 3 at 1-2). The following facts alleged in the Complaint are presumed true at this stage of the 4 procedural process.⁵ 5 Plaintiff generally claims Defendants violated his constitutional rights in connection with 6 an unspecified medical condition for which he underwent carpal tunnel surgery, contracted 7 gangrene, and eventually had two fingers amputated.

(Id. at 2-5). The asserted facts are 8 somewhat disjointed but appear to span an unspecified period of time from the initial medical 9 consultation through surgical intervention and, ultimately, amputation. (Id.). 10 As to Defendant Pat Horn, KVSP Warden, Plaintiff claims Horn is liable for "failing to 11 protect" Plaintiff's federal and state right. (Id. at 2).

He attributes liability to Horn "for his 12 subordinates staff" and hiring inadequate outside staff. (Id.). 13 As to KVSP Physician Assistant Chen Ho, Plaintiff contends that Ho's actions were 14 undertaken with a "malicious and sadistic intent." (Id. at 4). Plaintiff claims his amputation 15 resulted for an untreated blood clot and infection. (Id. at 14).

16 As to Dr. Freeman, the Complaint states Freeman is a an outside contractor of CDCR 17 and acted with in a "malicious and sadistic manner" by performing carpal tunnel surgery on the 18 wrong wrist. (Id. at 5). 19 Plaintiff claims the Defendants' respective conduct violated his rights under the "5th, 6th, 20 14th, and 8th Amendments."⁶ (Id. at 3).

As relief, Plaintiff seeks \$2.5 million in compensatory 21 damages. (Id. at 6). 22 //// 23 //// 24 //// 25 5 The Complaint refers to exhibits demonstrating exhaustion. (See Doc. No. 9 at 3). A copy of a "Daily 26 Program Status Report" effective June 12, 2025 is attached to the Complaint. (Doc. No. 9 at 8-11).

The exhibit does not address exhaustion and is not otherwise referenced in the Complaint and the Court cannot 27 discern any reason for its inclusion. 6 The Court liberally construes the allegations in the Complaint as alleging an Eighth Amendment medical 28 deliberate indifference claim due to Plaintiff's status as a prisoner. 1 APPLICABLE LAW AND ANALYSIS 2 1.

Official Capacity Claims 3 The Complaint sues all Defendants in both their official and individual capacities and 4 seeks only monetary damages. The Eleventh Amendment bars a federal court

action for damages 5 brought by a citizen against the state. U.S. Const., Amend. XI; *Alabama v. Pugh*, 438 U.S. 781, 6782 (1978); *Penhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100 (1984); *Graham*, 7473 U.S. at 169.

A claim against any correctional officer or state official in their official capacity 8 is deemed an action against the state. See *Kentucky v. Graham*, 473 U.S. 159, 169 (1985) (when 9 state officials are named in their official capacities for monetary damages the action is deemed 10 against the state).

Thus, the claims brought against the Defendants in their official capacity are 11 barred by the Eleventh Amendment and are subject to dismissal. 12 2. Color of State Law – Dr. Freeman 13 To state a claim under § 1983, a plaintiff must show that a defendant acting under color of 14 state law caused an alleged deprivation of a right secured by federal law. See 42 U.S.C. § 1983; 15 *Park v. Thompson*, 851 F.3d 910, 921 (9th Cir.

2017). In certain cases, a private defendant can 16 be liable under § 1983 for actions under color of state law. *West v. Atkins*, 487 U.S. 42, 54 (1988) 17 However, to prescribe state action to a private doctor, courts must look to the relationship 18 between the state, the physician, and the prisoner, rather than relying solely upon whether a 19 physician is on the state's payroll or is a party to a state contract.

Id. at 56; see also *id.* at 55– 20 56 (“It is the physician's function within the state system, not the precise terms of his 21 employment, that determines whether his actions can fairly be attributed to the 22 State.... Contracting out prison medical care... does not deprive the State's prisoners of the means 23 to vindicate their Eighth Amendment rights.”).

At this stage of the screening process only, the 24 Court considers Plaintiff’s allegation Dr. Freeman was a contracted doctor with CDCR to 25 sufficient to allege Freeman was a state actor. 26 3. Supervisory Liability -KVSP Warden Pat Horn 27 Liability under section 1983 arises only upon a showing of personal participation by the 28 defendant. “There is no respondeat superior liability under section 1983.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.1989) (citations omitted).

A supervisor is only liable for constitutional 2 violations of his subordinates if the supervisor participated in or directed the violations or knew of 3 the violations and failed to act to prevent them. *Id.*, see also *Starr v. Baca*, 652 F.3d 1202, 1206– 4 07 (9th Cir. 2011). 5 Here, the Complaint names Defendant Pat Horn, KVSP Warden but alleges no personal 6 participation by Horn or knowledge of any delay to Plaintiff’s medical.

Instead, the Complaint 7 attributes liability to Horn solely based on supervisory position as Warden. Because the 8 Complaint is devoid of any facts alleging Horn personally participated in

or knew of the alleged 9 medical deliberate indifference suffered by Plaintiff and failed to prevent it, the Complaint fails to 10 state a claim against Defendant Horn. 11 4.

Rule 8 and Eighth Amendment Medical Deliberate Indifference 12 Deliberate indifference to the serious medical needs of an incarcerated person constitutes 13 cruel and unusual punishment in violation of the Eighth Amendment. See *Estelle v. Gamble*, 429 14 U.S. 97, 104 (1976).

To maintain an Eighth Amendment claim premised on prison medical 15 treatment, the prisoner must show that officials were deliberately indifferent to his serious 16 medical needs. A finding of “deliberate indifference” involves an examination of two elements: 17 the seriousness of the plaintiff’s medical need (determined objectively) and the nature of the 18 defendant’s response (determined by defendant’s subjective state of mind).

See *McGuckin v. 19 Smith*, 974 F.2d 1050, 1059 (9th Cir.1992), overruled on other grounds, *WMX Technologies, Inc. 20 v. Miller*, 104 F.3d 1133, 1136 (9th Cir.1997) (en banc). On the objective prong, a “serious” 21 medical need exists if the failure to treat “could result in further significant injury” or the 22 “unnecessary and wanton infliction of pain.” *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir.

23 2014). On the subjective prong, a prison official must know of and disregard a serious risk of 24 harm. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Such indifference may appear when a 25 prison official intentionally denies or delays care, or intentionally interferes with treatment once 26 prescribed. *Estelle*, 429 U.S. at 104-05. 27 If, however, the official failed to recognize a risk to the plaintiff—that is, the official 28 “should have been aware” of a risk, but in fact was not—the official has not violated the Eighth 1 Amendment.

Sandoval v. Cnty. of San Diego, 985 F.3d 657, 668 (9th Cir. 2021) (emphasis in 2 original). That is because de liberate indifference is a higher standard than medical malpractice. 3 Thus, a difference of opinion between medical professionals—or between the plaintiff and 4 defendant—generally does not amount to deliberate indifference. See *Toguchi v. Chung*, 391 5 F.3d 1051, 1057 (9th Cir.

2004). An argument that more should have been done to diagnose or 6 treat a condition generally reflects such differences of opinion and not deliberate indifference. 7 *Estelle*, 429 U.S. at 107. To prevail on a claim involving choices between alternative courses of 8 treatment, a plaintiff must show that the chosen course “was medically unacceptable under the 9 circumstances,” and was chosen “in conscious disregard of an excessive risk” to the plaintiff’s 10 health.

Hamby v. Hammond, 821 F.3d 1085, 1092 (9th Cir. 2016). 11 Neither will an “inadvertent failure to provide medical care” sustain a claim, *Estelle*, 429 12 U.S. at 105, or even gross negligence, *Lemire v. California Dep’t of Corr. & Rehab.*, 726 F.3d 13 1062, 1082 (9th Cir. 2013). Misdiagnosis alone is not a basis for a claim of deliberate medical 14 indifference.

Wilhelm v. Rotman, 680 F.3d 1113, 1123 (9th Cir. 2012). A delay in treatment, 15 without more, is likewise insufficient to state a claim. Shapley v. Nevada Bd. of State Prison 16 Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985). It is only when an official both recognizes and 17 disregards a risk of substantial harm that a claim for deliberate indifference exists.

Peralta v. 18 Dillard, 744 F.3d 1076, 1086 (9th Cir. 2014) (en banc). A plaintiff must also demonstrate harm 19 from the official's conduct. Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). And the 20 defendant's actions must have been both an actual and proximate cause of this harm. Lemire, 726 21 F.3d at 1074. 22 As an initial matter, the Complaint does not identify a date or when any of the alleged 23 action or inaction occurred and further violates Rule 8 because Plaintiff does not allege 24 the specific dates that the misconduct occurred.

See Cervantes v. Elsen, 2023 WL 3483292 (N.D. 25 Cal. May 15, 2023) (allegations that the misconduct occurred from 2022 to 2023 was not a 26 specific date); Valenzuela v. Monson, 2020 WL 1812043, at *2 (D. Ariz. Apr. 8, 2020); Fisher v. 27 Washington State Department of Corrections, 2019 WL 1745086, at *1 (W.D. Wash. Apr. 18, 28 2019) (the complaint violated Rule 8 of the Federal Rules of Civil Procedure because, among 1 other reasons, it did not provide a specific date and therefore it did not "provide the defendants 2 fair notice of what the claim is..."); Walker v. Muniz, 2019 WL 2359229, at *4 (N.D.

Cal. Jun. 4, 3 2019) (referencing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) when explaining 4 the specific date must be alleged to meet the requirement of giving defendants fair 5 notice); McIntosh v. City of L.A., 2005 U.S. Dist. LEXIS 53641, at *5 (C.D. Cal. Jul. 21, 2005) 6 (citing McHenry v. Renne, 84 F.3d 1172, 1177-79 (9th Cir. 1996)). 7 Further, the Complaint is replete with conclusory allegations that lack factual specificity.

8 (See generally Doc. No. 9). More particularly, as to Defendant Ho, the Complaint characterizes 9 his actions as as malicious and sadistic, but these conclusory assertions are unsupported by factual 10 detail. As pointed out in the screening order, the Complaint fails to allege facts to support 11 Plaintiff's conclusory allegations that Ho intentionally denied care, delayed treatment despite 12 awareness of harm, or interfered with a prescribed medical course.

For instance, the Complaint 13 fails to identify any date(s) of when Plaintiff initially sought treatment from Ho, what symptoms 14 he presented with necessitating medical treatment, what treatment, if any, that Ho provided or 15 withheld, and facts from which the Court can infer that Ho possessed subjective knowledge of a 16 substantial risk of serious harm for the delay.

Without more, the assertion of mere delay without 17 any factual detail is insufficient to establish deliberate medical indifference. Shapley v. Nev. Bd. 18 of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985). Where a prisoner alleges that delay 19 of medical treatment evinces deliberate indifference, the prisoner must allege facts from which 20 the court can infer that the delay caused

“significant harm and that defendants should have known 21 this to be the case.” *Hallett v. Morgan*, 296 F.3d 732, 745-46 (9th Cir.

2002) (emphasis added). 22 Because the Complaint is devoid of any facts as to Plaintiff’s interactions with Ho, i.e. date(s) of 23 Plaintiff’s interactions with Ho, what symptoms he was exhibiting, what treatment, if any, Ho 24 provided, the undersigned finds the Complaint, as plead, fails to state an Eighth Amendment 25 deliberate indifference claim against Ho.

26 As to Defendant Freeman, Plaintiff attributes liability solely based on Freeman 27 performing surgery on the wrong wrist, and Plaintiff’s eventual amputation. (Id. at 4). Plaintiff 28 describes Freeman’s conduct as sadistic and malicious but again fails to provide sufficient factual 1 support. Again, there is no date as to when Freeman provided surgery, and date when Plaintiff 2 developed gangrene.

Nor do es the Complaint contain any allegations from which the Court may 3 infer that Freeman’s actions amounted to anything more than misdiagnosis or medical 4 malpractice. Allegations sounding in medical negligence, even if serious, do not satisfy the 5 deliberate indifference standard. See *Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012). 6 For these reasons, the undersigned finds that the Complaint fails to allege sufficient facts 7 to articulate a deliberate indifference claim against either Ho or Freeman.

The Complaint lacks 8 the specificity, factual content, and plausible theory of constitutional liability necessary to state a 9 claim for relief. 10 5. State Law Claims 11 Plaintiff’s Complaint alleges medical malpractice claims but does not allege that he 12 complied with the notice and exhaustion requirements of the Government Claims Act (“GCA”) 13 with respect to his pendent state law claims.

Cal. Gov’t Code §§ 905, 905.2, 910, 911.2, 945.4, 14 950–950.2. Under the GCA, a claimant may not maintain a state law tort cause action for 15 damages against a public employee or “local public entity” unless he has first presented a written 16 claim to the state Victim Compensation and Government Claims Board, and the Board has acted 17 on it. See Cal. Gov’t.Code §§ 900.4, 905, 905.2, 945.4, & 950.2.

State law claims are subject to 18 dismissal for failure to comply with GCA. See *Karim–Panahi v. LA. Police Dep’t*, 839 F.2d 621, 19 627 (9th Cir.1988). If Plaintiff has not done so, he must submit any such claim “not later than six 20 months after the accrual of the cause of action.” See Cal. Gov’t.Code § 911.2. Further, even if 21 properly plead, the Court may decline to exercise supplemental jurisdiction over state law claims 22 where all federal claims have been dismissed.

See 28 U.S.C. § 1367(c)(3); *Aciri v. Varian 23 Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997). Because Plaintiff’s Complaint does not allege 24 that he complied with the GCA exhaustion requirements, the state law claims in the Complaint 25 are subject to dismissal. 26

OPPORTUNITY TO AMEND 27 The Court pointed out the above deficiencies in its Screening Order.

(See Doc. No. 15). 28 Specifically, the Court advised Plaintiff that his Complaint failed to state any claim but afforded 1 Plaintiff the opportunity to file an amended complaint. “Although leave to amend should be given 2 freely, a district court may di smiss without leave where a plaintiff’s proposed amendments would 3 fail to cure the pleading deficiencies and amendment would be futile.” *Cervantez v. Countrywide 4 Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir.

2011). Here, however, the undersigned does 5 not find it clear that amendment would not cure the pleading deficiencies in Plaintiff’s complaint 6 as to his claims brought against the defendants in their individual capacities.

Thus, the 7 undesignated recommends that the Plaintiff be permitted leave to file an amended complaint. 8 ACCORDINGLY, it is ORDERED: 9 1. The Clerk terminate Plaintiff’s Motion to Grant Petition for Statement of Claim 10 (Doc. No. 18) which the Court construes a notice to stand on his complaint. 11 2.

The Clerk randomly assign this case to a district judge for consideration of these 12 Findings and Recommendation. 13 It is further RECCOMENDED: 14 1. The Complaint (Doc. No. 9) be dismissed without prejudice under § 1915A for failure 15 to state a claim. 16 2. Plaintiff be granted leave to file an amended complaint within thirty (30) days of the 17 district court’s adoption of these Findings and Recommendations.

18 NOTICE TO PARTIES 19 These Findings and Recommendations will be submitted to the United States District 20 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within 14 days 21 after being served with a copy of these Findings and Recommendations, a party may file written 22 objections with the Court. Id.; Local Rule 304(b).

The document should be captioned, 23 “Objections to Magistrate Judge’s Findings and Recommendations” and shall not exceed fifteen 24 (15) pages. The Court will not consider exhibits attached to the Objections. To the extent a party 25 wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its 26 CM/ECF document and page number, when possible, or otherwise reference the exhibit with 27 specificity.

Any pages filed in excess of the fifteen (15) page limitation may be disregarded by 28 the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 1 | 636(b)d)(C). A party’s failure to file any objections within the specified time may result in the 2 | waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.

2014). 3 * | Dated: _ October 8, 2025 Wiha Th fares Hack 5 HELENA M. BARCH-KUCHTA ‘ UNITED STATES MAGISTRATE JUDGE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-eastern-district-of-cal/2025/larry-wyane-palsey-jr-v-pat-horn-et-al-qhekm31c>