

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

McCready v. Wellpath, et al.

McCready · No. 1:24-cv-01208-BAM (PC) · Decided July 21, 2025

SUMMARY

The United States District Court for the Eastern District of California screened Casey McCready’s first amended civil-rights complaint concerning involuntary tuberculosis testing and alleged threats involving medication and disability-related shoes. The magistrate judge found that the complaint failed to state a cognizable claim, recommended dismissal with prejudice, and ordered random assignment of a district judge, allowing 14 days for objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 21, 2025
DOCKET	1:24-cv-01208-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Prisoner civil-rights action under 42 U.S.C. § 1983 proceeding in forma pauperis. After screening the original complaint and granting leave to amend, the magistrate judge screened the first amended complaint and issued findings and recommendations that the action be dismissed with prejudice for failure to state a claim.
STANDARD OF REVIEW	Screening under 28 U.S.C. §§ 1915A and 1915(e)(2)(B)(ii), accepting factual allegations as true and determining whether the complaint states a facially plausible claim for relief under Federal Rule of Civil Procedure 8(a)(2) and Ashcroft v. Iqbal.
PRECEDENTIAL VALUE	Unpublished magistrate judge findings and recommendations; nonprecedential
PARTIES	Casey McCready v. Wellpath, Nurse Victoria, Victoria's supervisor, ADA Coordinator, Medical staff at Madera County Jail, Does 1-10, Wellpath medical staff

TOPICS

section 1983 prisoners rights due process civil procedure cruel and unusual punishment

PRACTICE AREAS

Civil rights Prisoner litigation Constitutional law Federal civil procedure Medical care in detention

QUESTIONS PRESENTED

1. Whether the first amended complaint plausibly alleged deliberate indifference to medical needs under the Fourteenth Amendment based on involuntary tuberculosis testing and alleged threats concerning medication, medical access, and ADA-approved shoes.
2. Whether the alleged coercion and administration of tuberculosis testing stated an excessive-force claim under the applicable constitutional standard.
3. Whether further leave to amend was warranted after Plaintiff had already amended the complaint.

HOLDINGS

1. The first amended complaint failed to state a cognizable deliberate-indifference claim because Plaintiff alleged that tuberculosis testing was against his wishes but did not allege a substantial risk of harm, actual deprivation of medically necessary medication or shoes, or conduct amounting to more than negligence.
2. The alleged coercion and tuberculosis testing did not state an excessive-force claim because Plaintiff did not allege force applied maliciously and sadistically to cause harm, and he did not allege that the threatened deprivation of medication or shoes actually occurred.
3. Further leave to amend was not warranted because Plaintiff had already been given the relevant legal standards and had been unable to cure the deficiencies, which the Court determined could not be cured.

KEY QUOTATIONS

“To survive screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged.” (at 2)

“Indeed, California has created a comprehensive program for containing the serious contagious disease of tuberculosis in the incarceration setting.” (at 3)

FACTUAL BACKGROUND

Plaintiff alleged that, while housed at the Madera County Jail, Nurse Victoria injected him with tuberculosis-testing fluid after he had twice refused testing. He claimed that Victoria threatened to withhold anti-inflammatory medication, disregard sick-call requests, and deny access to ADA-approved shoes if he refused, and that jail medical staff concealed their names. Plaintiff alleged chronic medication needs resulting from a shattered pelvis, but did not allege that he was actually deprived of medically necessary medication or shoes or that the tuberculosis testing caused a risk of harm.

PROCEDURAL HISTORY

Plaintiff, a former county jail inmate and current state prisoner, filed a pro se complaint alleging inadequate medical care, coercive tuberculosis testing, denial of medication and ADA-approved shoes, and related constitutional violations. The Court screened the complaint and granted leave to amend. After reviewing the first amended complaint, the magistrate judge concluded that Plaintiff could not cure the pleading deficiencies, directed the Clerk to randomly assign a district judge, and recommended dismissal with prejudice subject to objections under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- Gordon v. County of Orange, 888 F.3d 1118, 1125 (9th Cir. 2018)
- Lolli v. County of Orange, 351 F.3d 410, 418-19 (9th Cir. 2003)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009)
- Castro v. County of Los Angeles, 833 F.3d 1060 (9th Cir. 2016)
- Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980)
- Estelle, 429 U.S. at 105-06
- Jolly v. Courghlin, 76 F.3d 468, 477 (2d Cir. 1996)
- Dunn v. White, 880 F.2d 1188, 1195 (10th Cir. 1989)
- Wilson v. Wilkinson, 608 F. Supp. 2d 891 (S.D. Ohio 2007)
- McDougald v. Stone, No. 1:17-cv-72, 2017 WL 8222430, at *5 (S.D. Ohio Aug. 22, 2017)
- Wilkins v. Gaddy, 559 U.S. 34, 37 (2010) (per curiam)
- Gosztyla v. Auld, No. 2:22-CV-01276-EFB (PC), 2022 WL 4388747, at *2 (E.D. Cal. Sept. 22, 2022)
- Washington v. Cambra, No. C 95-3216 TEH, 1996 WL 507313, at *4 (N.D. Cal. Aug. 27, 1996)
- Mack v. Campbell, 1991 WL 243569 (6th Cir. 1991)
- Karolis v. New Jersey Department of Corrections, 935 F. Supp. 523, 527-28 (D.N.J. 1996)
- Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

(PC) Mccready v. Welpath

PER CURIAM.

1 2 3 4 5

6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT OF CALIFORNIA

8 9 CASEY MCCREADY, Case No. 1:24-cv-01208-BAM (PC) 10 Plaintiff, ORDER
DIRECTING CLERK OF COURT TO

RANDOMLY ASSIGN DISTRICT JUDGE TO

11 v. ACTION

12 WELLPATH, et al., FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION, WITH PREJUDICE, FOR

13 Defendant. FAILURE TO STATE A CLAIM 14 (ECF No. 8)

15 FOURTEEN (14) DAY DEADLINE

16 17 Plaintiff Casey McCready (“Plaintiff”) is a former county jail inmate, current state 18
prisoner, proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. 19 §
1983. The Court screened Plaintiff’s complaint, and Plaintiff was granted leave to amend. 20
Plaintiff’s first amended complaint is before the Court for screening. (ECF No. 8.) 21 I. Screening
Requirement and Standard 22 The Court is required to screen complaints brought by prisoners
seeking relief against a 23 governmental entity and/or against an officer or employee of a
governmental entity. 28 U.S.C. 24 § 1915A(a). Plaintiff’s complaint, or any portion thereof, is
subject to dismissal if it is frivolous 25 or malicious, if it fails to state a claim upon which relief
may be granted, or if it seeks monetary 26 relief from a defendant who is immune from such relief.
28 U.S.C. §§ 1915A(b); 27 1915(e)(2)(B)(ii). 28 1 A complaint must contain “a short and plain
statement of the claim showing that the 2 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2).
Detailed factual allegations are not 3 required, but “[t]hreadbare recitals of the elements of a cause
of action, supported by mere 4 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S.
662, 678 (2009) (citing *Bell 5 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a
plaintiff’s allegations are taken as 6 true, courts “are not required to indulge unwarranted
inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 7 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation
marks and citation omitted). 8 To survive screening, Plaintiff’s claims must be facially plausible,
which requires 9 sufficient factual detail to allow the Court to reasonably infer that each named
defendant is liable 10 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks
omitted); *Moss v. U.S. Secret 11 Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility
that a defendant acted unlawfully 12 is not sufficient, and mere consistency with liability falls
short of satisfying the plausibility 13 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted);
Moss, 572 F.3d at 969. 14 II. Plaintiff’s Allegations 15 Plaintiff is currently housed at Avenal State
Prison. At the time of the events, Plaintiff 16 was housed in the Madera County Jail. Plaintiff
names as Defendants: (1) Wellpath, 1 (2) Nurse 17 Victoria, (3) Victoria’s supervisor, (4) ADA
Coordinator, (5) medical staff at Madera Co. Jail, (6)
18 Does 1-10, Wellpath Medical Staff.

19 In claim 1, Plaintiff alleges violation of his rights to medical care and medications, ADA 20 equipment, and freedom from cruel and unusual punishment. Plaintiff alleges that Nurse Victoria 21 forced Plaintiff to be injected by her with TB testing fluid. This happened after Plaintiff had 22 twice refused the injection. She and other staff withheld Plaintiff's ADA approved shoes from 23 CDCR. Victoria alone told Plaintiff that if Plaintiff refused again, medical would not renew 24 Plaintiff's anti-inflammatory medications and that any sick call slips Plaintiff put in would be 25 disregarded. Plaintiff said that he is an Armstrong class CDCR prisoner from Avenal State 26 1 At the time the complaint was filed, Wellpath was in Bankruptcy proceedings, United States 27 Bankruptcy Court for the Southern District of Texas, lead Case No. 24-90533-(ARP), and was subject to a stay of civil proceedings. The Court was recently informed that the stay as been 28 lifted. 1 Prison. Plaintiff's medications and shoes should have been granted through the reasonable 2 accommodation process. Plaintiff asked Victoria to be clear: If Plaintiff were to choose not to be 3 injected, Plaintiff would be denied medical access, medication and his shoes. In the past 18 4 months, Plaintiff had been tested 3 times and Plaintiff did not want it. She confirmed that 5 Plaintiff's meds, shoes and sick call requests would be denied and disregarded. At that time under 6 threat, Plaintiff was injected with fluid against Plaintiff's free will under fear of medical access 7 being denied. Plaintiff alleges he has chronic medication needs from a shattered pelvis. Without 8 anti-inflammatory medicine, Plaintiff is crippled. Without shoes, he cannot balance or walk well. 9 Plaintiff alleges he has the right to refuse the vaccine or other testing injections. 10 In claim 2, Plaintiff alleges that Victoria and medical staff at Madera County jail will not 11 disclose their names and wear their name tags identification cards backwards to conceal names. 12 Victoria through the threat forced Plaintiff to be injected with TB testing agent after he had 13 refused 2 separate times. 14 As remedies, Plaintiff requests compensatory damages. 15 III. Discussion 16 Plaintiff's complaint fails to state a cognizable claim under 42 U.S.C. § 1983. Plaintiff 17 cannot cure the deficiencies. 18 Fourteenth Amendment Due Process – Denial of Medical Care 19 Under the Fourteenth Amendment, pretrial jail detainees have the right to receive 20 adequate medical care during their detention. *Gordon v. County of Orange*, 888 F.3d 1118, 1125 21 (9th Cir. 2018); see also *Lolli v. County of Orange*, 351 F.3d 410, 418-19 (9th Cir. 2003). To 22 establish a deliberate indifference to medical needs claim against an individual defendant under 23 the due process clause of the Fourteenth Amendment, a pretrial detainee must show that: 24 (i) the defendant made an intentional decision with respect to the conditions 25 under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable 26 available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the 27 consequences of the defendant's conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff's injuries. 28 1 *Gordon*, 888 F.3d at 1125. The plaintiff must “prove more than negligence but less than 2 subjective intent—something akin to reckless disregard.” *Id.* (quoting *Castro v. County of Los 3 Angeles*, 833 F.3d 1060 (9th Cir. 2016)).

Moreover, before it can be said that a prisoner's civil 4 rights have been violated, “the indifference to his medical needs must be substantial. Mere 5 ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.” 6 *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.1980) (citing *Estelle*, 429 U.S. at 7 105–06). 8 Plaintiff fails to provide sufficient factual allegations to support a claim for inadequate 9 medical care. Plaintiff challenges the administration of tuberculosis tests but fails to allege any 10 risk of harm or that Plaintiff was in danger of harm. Plaintiff merely alleges that the tuberculosis 11 testing was against his wishes. Plaintiff fails to state a claim on this basis. 12 Indeed, California has created a comprehensive program for containing the serious 13 contagious disease of tuberculosis in the incarceration setting. California Penal Code §§ 7570- 14 7576. Here, it appears Nurse Victoria was following state law for testing of inmates. See Penal 15 Code § 7570 (“In enacting this chapter, the Legislature hereby finds and declares that tuberculosis 16 is a serious contagious disease. It is vital to the health and safety of inmates, employees, and the 17 public at large, to conduct appropriate examinations, testing, and treatment in order to control the 18 spread of tuberculosis in California's institutions.”) The frequency of the tuberculosis tests are 19 mandated by state law. Penal Code § 7573 (“The chief medical officer shall ensure that 20 examinations or tests for tuberculosis on all inmates or wards are conducted upon incarceration 21 and at least annually thereafter.”) Should an inmate refuse to be voluntarily tested, that inmate 22 may be involuntarily tested. Penal Code § 7574 (“any inmate or ward who refuses to submit to an 23 examination, test, or treatment for tuberculosis . . . or refuses treatment for tuberculosis, or who, 24 after notice, violates, or refuses or neglects to conform to, any rule, order, guideline, or regulation 25 prescribed by the department with regard to tuberculosis control shall be tested involuntarily and 26 may be treated involuntarily.”) 27 Courts around the country have held that prisons and jails have legitimate reasons to 28 conduct regular testing of prisoners for contagious diseases. Under these circumstances, 1 Defendants had a legitimate—indeed compelling—governmental interest in testing all prisoners 2 for the presence of tuberculosis, in order to meet its obligations to control contagion and to 3 protect its other prisoners and staff. See *Jolly v. Courghlin*, 76 F.3d 468, 477 (2d Cir. 1996) 4 (holding that a prison had a compelling state interest in mandatory tuberculosis testing); *Dunn v. 5 White*, 880 F.2d 1188, 1195 (10th Cir. 1989) (holding that a prison had a legitimate penological 6 interest in ascertaining the extent of contagion that justified coercive blood testing for AIDS); 7 *Wilson v. Wilkinson*, 608 F. Supp. 2d 891 (S.D. Ohio 2007) (upholding state statute requiring 8 mandatory DNA testing of prisoners against Fourth Amendment challenge); see also *McDougald 9 v. Stone*, No. 1:17-cv-72, 2017 WL 8222430, at *5 (S.D. Ohio Aug. 22, 2017) (finding legitimate 10 penological interest in mandatory blood-draw of prisoner who spit on officer). 11 Plaintiff's amended complaint, viewed in the light most favorable to Plaintiff, confirms 12 that Defendants were acting in compliance with California state statutes. Defendants were 13 obligated to test plaintiff for tuberculosis under California law, and had authority to impose such 14 tests on prisoners involuntarily. Penal Code §§ 7570, 7574. Such code

sections have not been found to be unconstitutional. Coercion of Testing Plaintiff fails to state a claim that he was coerced to take the testing. As stated above, Plaintiff could have been involuntary tested. To state an excessive force claim, plaintiff must allege facts showing that he was subjected to excessive physical force that was applied “maliciously and sadistically to cause harm” rather than “in a good-faith effort to maintain or restore discipline.” *Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010) (per curiam) (internal quotation omitted); *Gosztyla v. Auld*, No. 2:22-CV-01276-EFB (PC), 2022 WL 4388747, at *2 (E.D. Cal.

Sept. 22, 2022) (failed to state a claim for being verbally coerced to take a COVID test).

Plaintiff alleges he was threatened that if he did not take the tuberculosis test, his medications and shoes would be taken away. However, Plaintiff does not allege the threats happened and that he was deprived of any medically necessary medication or shoes. Even if he were so deprived, courts have upheld the punishment of inmates who refused the tuberculosis test. See, e.g., *Washington v. Cambra*, No. C 95-3216 TEH, 1996 WL 507313, at *4 (N.D. Cal.

Aug. 27, 1996) (upholding use of force). Other courts outside the Ninth Circuit have similarly upheld mandatory and forced tuberculosis testing of prisoners. See *Mack v. Campbell*, 1991 WL 243569 (6th Cir. 1991) (administrative segregation for refusing tuberculosis screening test does not violate due process); *Karolis v. New Jersey Dept. of Corr.*, 935 F. Supp. 523, 527-28 (D. N.J. 1996) (involuntary administration of TB test to prisoner upheld against challenge under Religious Freedom Restoration Act because there is a compelling interest in stopping the spread of TB in a prison) IV. Conclusion and Recommendation For the reasons discussed, the Court finds that Plaintiff’s first amended complaint fails to state a cognizable claim for relief. Despite being provided with the relevant legal standards, Plaintiff has been unable to cure the deficiencies in his complaint and cannot cure the deficiencies. Further leave to amend is not warranted. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th

13 Cir. 2000).

Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a District Judge to this action. IT IS HEREBY RECOMMENDED that this action be dismissed, with prejudice, for failure to state a cognizable claim upon which relief may be granted. These Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). IT IS SO ORDERED. Dated: July 18, 2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

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