

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

Coronel v. Havard

Coronel · No. 2:24-cv-3087-JDP (P) · Decided April 24, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 HANK RICHARD CORONEL, Case No. 2:24-cv-3087-JDP (P) 12
Plaintiff, 13 v. ORDER; FINDINGS AND RECOMMENDATIONS 14 HAVARD, 15 Defendant.
16 17 18 Plaintiff, a state inmate proceeding pro se, alleges in his first amended complaint that 19
defendants Sergeant Havard, a correctional officer at California State Prison-Sacramento, and the
20 California Department of Corrections, used excessive force against him in violation of the
Eighth 21 Amendment and violated his due process rights by filing a false disciplinary charge
against him.

22 ECF No. 10. I recommend that plaintiff’s first amended complaint be dismissed without 23
prejudice because it is evident from the face of the complaint that plaintiff has not exhausted his
24 administrative remedies. 25 Screening and Pleading Requirements 26 A federal court must
screen the complaint of any claimant seeking permission to proceed 27 in forma pauperis.

See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and 28 dismiss any
portion of the complaint that is frivolous or malicious, fails to state a claim upon 1 which relief
may be granted, or seeks monetary relief from a defendant who is immune from such 2 relief. Id.
3 A complaint must contain a short and plain statement that plaintiff is entitled to relief, 4 Fed.

R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its 5
face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not 6
require detailed allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S. 7
662, 678 (2009). If the allegations “do not permit the court to infer more than the mere 8
possibility of misconduct,” the complaint states no claim.

Id. at 679. The complaint need not 9 identify “a precise legal theory.” *Kobold v. Good Samaritan*
Reg’l Med. Ctr., 832 F.3d 1024, 10 1038 (9th Cir. 2016). Instead, what plaintiff must state is a
“claim”—a set of “allegations that 11 give rise to an enforceable right to relief.” *Nagrampa v.*
MailCoups, Inc., 469 F.3d 1257, 1264 12 n.2 (9th Cir. 2006) (en banc) (citations omitted).

13 The court must construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404 14
U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it 15

appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which 16 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir.

2017). 17 However, “‘a liberal interpretation of a civil rights complaint may not supply essential elements 18 of the claim that were not initially pled.’” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 19 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 20 Analysis 21 Plaintiff alleges that Havard and another sergeant called him into Havard’s office for a 22 confidential interview.

ECF No. 10 at 3. Plaintiff alleges that Havard became aggravated at 23 plaintiff’s answers, and that Havard threw him against the wall, kned him in the face, and 24 twisted his wrists into the handcuffs to a point where he thought his wrists were broken. *Id.* He 25 alleges that these actions violated his Eighth and Fourteenth Amendment rights. *Id.* at 3-4. 26 It is evident from the face of the complaint that plaintiff did not exhaust his available 27 administrative remedies, and his complaint must be dismissed as a result. “The Prison Litigation 28 Reform Act of 1995... mandates that an inmate exhaust ‘such administrative remedies as are 1 available’ before bringing suit to challenge prison conditions.” *Ross v. Blake*, 578 U.S. 632, 635 2 (2016) (quoting 42 U.S.C. § 1997e(a)).

The availability of administrative remedies must be 3 assessed at the time the prisoner filed his action. See *Andres v. Marshall*, 867 F.3d 1076, 1079 4 (9th Cir. 2017). Although dismissal of a prisoner civil rights action for failure to exhaust 5 administrative remedies must generally be decided pursuant to a motion for summary judgment, 6 see *Albino v. Baca*, 747 F.3d 1162 (9th Cir.

2014), a court can also dismiss a case at screening 7 “[i]n the rare event that a failure to exhaust is clear on the face of the complaint,” *id.* at 1166. See 8 also *Medina v. Sacramento Cnty. Sheriff’s Dep’t*, No. 2:16-cv-0765-AC-P, 2016 WL 6038181, at 9 *3 (E.D. Cal. Oct. 14, 2016) (“When it is clear from the face of the complaint and any attached 10 exhibits that a plaintiff did not exhaust his available administrative remedies before commencing 11 an action, the action may be dismissed on screening.”).

12 I dismissed plaintiff’s original complaint because it appeared that plaintiff failed to 13 exhaust his administrative remedies. See ECF No. 7. I informed plaintiff that he needed to 14 indicate whether he exhausted his administrative remedies if he chose to file an amended 15 complaint. See *id.* at 3-4. Plaintiff chose to file an amended complaint, in which he confirms that 16 he has not exhausted his administrative remedies.

For his claims, plaintiff checked the boxed for 17 “Yes” in response to the questions, “Are there any administrative remedies... available at your 18 institution?” and “Did you submit a request for administrative relief on Claim I?” See ECF No. 19 10 at 3-4. Plaintiff checked the box “No” for the answer to the question of “Did you appeal your 20 request for relief on Claim I to the highest

level?” and “Did you appeal your request for relief on 21 Claim II to the highest level?” See *id.* He states that he has not received an answer for his 22 administrative complaint, so he cannot yet appeal it.

See *id.* 23 Exhaustion must occur prior to filing suit, and a plaintiff cannot exhaust while the suit is 24 pending. *McKinney v. Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002). As such, the 25 appropriate outcome for this case is dismissal without prejudice for failure to exhaust 26 administrative remedies. See *Albino*, 747 F.3d at 1166; *Medina*, 2016 WL 6038181, at *3.

27 Accordingly, it is ORDERED that the Clerk of Court is directed to assign a district judge 28 to this action. 1 Further, it is RECOMMENDED that plaintiff’s first amended complaint be DISMISSED 2 || without prejudice for failure to exhaust administrative remedies, and the Clerk of Court be 3 | directed to close this action. 4 These findings and recommendations are submitted to the United States District Judge 5 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)().

Within fourteen days 6 | after being served with these findings and recommendations, any party may file written 7 | objections with the court and serve a copy on all parties. Such a document should be captioned 8 | “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the 9 | objections shall be served and filed within fourteen days after service of the objections.

The 10 | parties are advised that failure to file objections within the specified time may waive the right to 11 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez* 12 | *v. Yist*, 951 F.2d 1153 (9th Cir. 1991). 13 4 IT IS SO ORDERED. 15 (1 Ow — Dated: _ April 24, 2025 Q—— 16 JEREMY D. PETERSON 7 UNITED STATES MAGISTRATE JUDGE 18 19 20 21 22 23 24 25 26 27 28