

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Clinton v. Allen

No. 3:23-cv-01471-CAB-SBC (S.D. Cal. May 20, 2025) · No. 3:23-cv-01471-CAB-SBC · Decided May 20,
2025

OPINION

Clinton v. Allison

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 MARKEITH CLINTON, Case No.: 3:23-cv-01471-CAB-SBC 12 Plaintiff,

ORDER GRANTING MOTION TO

13 v. DISMISS

14 C. ALLEN, et al., [Doc. Nos. 47, 59] 15 Defendants. 16

17 I. PROCEDURAL BACKGROUND

18 The Court previously dismissed Plaintiff’s amended complaint but gave Plaintiff 19
(proceeding pro se) leave to file an amended complaint. Defendant-Officers Allen, Colon, 20 and
Bingham have filed a motion to dismiss Plaintiff’s Second Amended Complaint 21 (SAC). [Doc.
No. 47.] The Court grants Defendants’ motion and partially dismisses the 22 SAC with prejudice.

23 II. PROCEDURAL BACKGROUND

24 The Court screened Plaintiff’s FAC and permitted only two causes of action to 25 proceed: (1)
an Eighth Amendment failure to protect claim against John Does 1 and 2 and 26 (2) a conspiracy
claim to deprive Plaintiff of his Eighth Amendment right to protection 27 from known and
substantial risks of harm involving Defendants Allen, Colon, John Does 28 1-3, and Jane Doe 4.
[Doc. No. 20.] Plaintiff then moved to file an amended complaint to 1 identify Defendant Colon as
John Doe 1 and Defendant Bingham as John Doe 2. [Doc.

2 No. 39.] The Court granted leave to amend and Plaintiff filed his SAC. [Doc. No. 44.]

3 Defendant Bingham waived service and entered an appearance in this case. [See Doc. No. 4 60.]

5 III. ANALYSIS

6 The Court does not rehash the facts alleged here, only noting that they are similar to 7 those
pleaded in the originally dismissed complaint. The familiar standard applies for a 8 motion to
dismiss. Fed. R. Civ. P. 12(b)(6) permits a party to file a motion to dismiss for 9 “failure to state a
claim upon which relief can be granted.” “To survive a motion to dismiss, 10 a complaint must
contain sufficient factual matter . . . to ‘state a claim for relief that is 11 plausible on its face.’”
Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. 12 v. Twombly, 550 U.S. 544,

570 (2007)). “Vague and conclusory allegations” concerning 13 government involvement in civil rights violations are insufficient to withstand a motion to 14 dismiss. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). 15 Plaintiff’s SAC still contains causes of action that the Court previously dismissed 16 when it screened the FAC. No new facts require an alternative outcome. The Court again 17 dismisses Plaintiff’s claims based on failure to protect based on the Fourteenth 18 Amendment, ADA and equal protection under the Fourteenth Amendment, retaliation 19 under the First Amendment, inadequate medical care under the Eighth Amendment, and 20 criminal law and administrative law claims. [See Doc. No. 10.] This dismissal is with 21 prejudice since further amendment would be futile. 22 Second, Plaintiff does not include any Doe Defendants (or Defendants other than 23 Colon, Allen, and Bingham) in the SAC. The use of Doe Defendants is not favored in the 24 Ninth Circuit. See *Fifty Associates v. Prudential Ins. Co.*, 446 F.2d 1187, 1191 (9th Cir. 25 1970). To plead a claim against a doe defendant in the Section 1983 context, a plaintiff 26 must specifically identify individual conduct that led to an alleged constitutional violation. 27 See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (the inquiry into causation is 28 individualized). All remaining Doe Defendants are dismissed from this case with 1 || prejudice. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (“[A]n amended 2 || pleading supersedes the original pleading.”).

3 IV. CONCLUSION

4 The only live claims in the operative complaint, the SAC, are (1) an Eighth 5 Amendment failure to protect claim against Defendants Colon and Bingham and (2) the 6 ||conspiracy allegations against Colon, Allen, and Bingham. All other Defendants are 7 ||terminated from this case. The remaining Defendants should respond to the identified 8 ||claims by June 3, 2025. The Clerk of the Court is directed to change the caption to reflect 9 ||the proper spelling of Defendant Bingham (“Officer P. Bingham”). 10 11 It is SO ORDERED. 12 € Z 13 || Dated 5/20/2025 Hon. Cathy Ann Bencivengo 14 United States District Judge 15 16 17 18 19 20 21 22 23 24 25 26 27 28