

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARON MIRON,	)	NO. EDCV 16-0463 JVS (AS)
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER DISMISSING FIRST AMENDED</b>
	)	
J. BEARD, et al.,	)	<b>COMPLAINT WITH LEAVE TO AMEND</b>
	)	
Defendants.	)	
_____	)	

On March 15, 2016, California state prisoner Aron Miron ("Plaintiff") filed a pro se Complaint pursuant to 42 U.S.C. § 1983. (Dkt. No. 1). On July 26, 2016, the Court dismissed the Complaint with leave to amend. (Dkt. No. 7). On September 12, 2016, Plaintiff filed a First Amended Complaint ("FAC") pursuant to Section 1983. (Dkt. No. 10). For the reasons set forth below, the FAC must be dismissed with leave to amend.

**PLAINTIFF'S ALLEGATIONS**

The FAC names as defendants: former Secretary of the California Department of Corrections and Rehabilitation ("CDCR") Jeffrey Beard, J.

1 Coulton, M.D., the Chief Medical Officer ("CMO") of Ironwood State  
2 Prison ("ISP") in Blythe, California, and R. Lewis, M.D., a physician  
3 at ISP. (FAC at 1).  
4

5 Plaintiff alleges that on September 8, 2009, he was transferred to  
6 Palo Verde Hospital ("PVH") in Blythe, California, where, at the behest  
7 of the CDCR, his gallbladder was removed without cause and without his  
8 consent. (FAC at 2). Plaintiff also claims that between November 8,  
9 2009, and January 13, 2010, he received chemotherapy treatments at  
10 Riverside Community Regional Medical Center ("RCRMC"). (Id.).  
11 However, his treatment was not completed due to a lack of approval.  
12 (Id.). Plaintiff "assume[s]" the Defendants made the decisions to  
13 remove his gallbladder and cease cancer treatment. (Id.).  
14

15 Plaintiff next asserts that on March 8, 2010, he was transferred  
16 from the CDCR to RCRMC, where he underwent surgery to treat three  
17 bulging discs. (FAC at 2). Plaintiff complains that only 2 discs were  
18 operated on due to a lack of CDCR approval. (Id.). Plaintiff also  
19 alleges that a doctor told him his spinal damage would not have been as  
20 severe if he had received the operation sooner. (Id.).  
21

22 Plaintiff further claims that on April 7, 2010, he was taken to  
23 PVH, where he underwent hemorrhoid surgery. (FAC at 2-3). Plaintiff  
24 states he has had numerous rectal problems postoperatively, including  
25 bleeding and incontinence, he now takes 17 pills each day, he can only  
26 lift 10 pounds, and he "feel[s] horrible" and is constantly in "much  
27 pain." (Id. at 3). Plaintiff indicates he has been repeatedly told  
28

1 that if he had received treatment for his conditions sooner, he would  
2 not have the problems he is experiencing today. (Id.).

3  
4 Based on these allegations, Plaintiff alleges Defendants were  
5 deliberately indifferent to his serious medical needs. (FAC at 3-5).  
6 Plaintiff seeks compensatory damages. (Id. at 5).

7  
8 **STANDARD OF REVIEW**

9  
10 Under the provisions of the Prison Litigation Reform Act of 1995,  
11 Plaintiff's FAC is subject to sua sponte review and must be dismissed  
12 if it is: (1) frivolous or malicious; (2) fails to state a claim upon  
13 which relief may be granted; or (3) seeks monetary relief from a  
14 defendant immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(B),  
15 1915A; Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000); Lopez v.  
16 Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc).

17  
18 Dismissal for failure to state a claim is appropriate if Plaintiff  
19 fails to proffer "enough facts to state a claim to relief that is  
20 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570  
21 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "A claim has  
22 facial plausibility when the plaintiff pleads factual content that  
23 allows the court to draw the reasonable inference that the defendant is  
24 liable for the misconduct alleged." Iqbal, 556 U.S. at 678; Hartmann  
25 v. Cal. Dep't of Corr. & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013).  
26 Although Plaintiff must provide "more than labels and conclusions, and  
27 a formulaic recitation of the elements of a cause of action will not  
28 do," Twombly, 550 U.S. at 555; Iqbal, 556 U.S. at 678, "[s]pecific

1 facts are not necessary; the [complaint] need only give the  
2 [Defendants] fair notice of what the . . . claim is and the grounds  
3 upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per  
4 curiam) (citations and internal quotation marks omitted); Twombly, 550  
5 U.S. at 555.

6  
7 In considering whether to dismiss a complaint, the Court must  
8 accept the factual allegations of the complaint as true, Wood v. Moss,  
9 134 S. Ct. 2056, 2065 (2014); Erickson, 551 U.S. at 93-94, construe the  
10 pleading in the light most favorable to the pleading party, and resolve  
11 all doubts in the pleader's favor. Jenkins v. McKeithen, 395 U.S. 411,  
12 421 (1969); Berg v. Popham, 412 F.3d 1122, 1125 (9th Cir. 2005). Pro  
13 se pleadings are "to be liberally construed" and are held to a less  
14 stringent standard than those drafted by a lawyer. Erickson, 551 U.S.  
15 at 94; Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam); see  
16 also Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) ("Iqbal  
17 incorporated the Twombly pleading standard and Twombly did not alter  
18 courts' treatment of pro se filings; accordingly, we continue to  
19 construe pro se filings liberally when evaluating them under Iqbal").  
20 Dismissal for failure to state a claim can be warranted based on either  
21 the lack of a cognizable legal theory or the absence of factual support  
22 for a cognizable legal theory. See Mendiondo v. Centinela Hosp. Med.  
23 Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint may also be  
24 dismissed for failure to state a claim if it discloses some fact or  
25 complete defense that will necessarily defeat the claim. Franklin v.  
26 Murphy, 745 F.2d 1221, 1228-29 (9th Cir. 1984).

27 \\

28 \\



1 to a two-year statute of limitations." Colony Cove Props., LLC, 640  
2 F.3d at 956; Cal. Civ. Proc. Code § 335.1; Jackson v. Barnes, 749 F.3d  
3 755, 761 (9th Cir. 2014), cert. denied, 135 S. Ct. 980 (2015). Federal  
4 law determines when a cause of action accrues and the statute of  
5 limitations period begins to run. Wallace v. Kato, 549 U.S. 384, 387  
6 (2007); Bradford v. Scherschligt, 803 F.3d 382, 386 (9th Cir. 2015).  
7 Under federal law, "a claim accrues when the plaintiff knows or has  
8 reason to know of the injury that forms the basis of his cause of  
9 action." Bradford, 803 F.3d at 386; Belanus v. Clark, 796 F.3d 1021,  
10 1025 (9th Cir. 2015), pet. for cert. filed, (Apr. 22, 2016). Here,  
11 Plaintiff complains about events occurring while he was imprisoned at  
12 ISP in 2009 and 2010 - long before he filed his initial Complaint in  
13 this matter.<sup>1</sup> For instance, Plaintiff alleges that on November 8, 2009,  
14 his gallbladder was removed without his informed consent. (FAC at 2).  
15 Yet, Plaintiff would certainly have been aware of both the surgery and  
16 his lack of informed consent at the time the surgery occurred.  
17 Tworivers v. Lewis, 174 F.3d 987, 992 (9th Cir. 1999). Thus, this  
18 claim appears time barred.

19  
20 **ORDER**

21  
22 Plaintiff's First Amended Complaint (Docket No. 10) is **DISMISSED**  
23 **WITH LEAVE TO AMEND**. If Plaintiff still wishes to pursue this action,  
24 he shall file a Second Amended Complaint within thirty (30) days, **or no**  
25

---

26  
27 <sup>1</sup> Plaintiff is no longer confined at ISP, but is now incarcerated  
28 at the California Health Care Facility in Stockton, California. (See,  
e.g., Dkt. No. 1 at 1; Dkt. No. 8). However, Plaintiff has not  
indicated when he was transferred from ISP.

