



1           Despite filing his complaint in 2016, plaintiff now claims that he did not seek copies of his  
2 medical records until recently, and appears to allege he does not have sufficient facts without  
3 such medical records to file an “accurate” amended complaint.<sup>2</sup> Plaintiff is advised that Rule  
4 41(b) of the Federal Rules of Civil Procedure provides:

5                   **Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or  
6 to comply with these rules or a court order, a defendant may move  
7 to dismiss the action or any claim against it. Unless the dismissal  
8 order states otherwise, a dismissal under this subdivision (b) and  
any dismissal not under this rule--except one for lack of  
jurisdiction, improper venue, or failure to join a party under Rule  
19--operates as an adjudication on the merits.

9 Id.

10           Plaintiff is required to diligently prosecute this action. Plaintiff has been provided  
11 numerous opportunities to amend his complaint, yet continues to fail to do so. Therefore,  
12 plaintiff’s motion for extension of time is denied. Plaintiff shall file his amended complaint  
13 within fourteen days from the date of this order. Failure to file an amended complaint will result  
14 in the dismissal of this action based on his failure to diligently prosecute this action and his failure  
15 to comply with the court’s order that he file an amended complaint.

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18 <sup>2</sup> A district court must construe a pro se pleading “liberally” to determine if it states a claim and,  
19 prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an opportunity  
20 to cure them. See Lopez, 203 F.3d at 1130-31. While detailed factual allegations are not  
21 required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic  
Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter,  
22 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft, 556 U.S. at 678  
(quoting Bell Atlantic Corp., 550 U.S. at 570).

23           A claim has facial plausibility when the plaintiff pleads factual  
24 content that allows the court to draw the reasonable inference that  
25 the defendant is liable for the misconduct alleged. The plausibility  
26 standard is not akin to a “probability requirement,” but it asks for  
more than a sheer possibility that a defendant has acted unlawfully.  
Where a complaint pleads facts that are merely consistent with a  
defendant’s liability, it stops short of the line between possibility  
and plausibility of entitlement to relief.

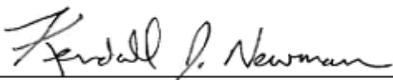
27 Ashcroft, 556 U.S. at 678 (citations and quotation marks omitted). Although legal conclusions  
28 can provide the framework of a complaint, they must be supported by factual allegations, and are  
not entitled to the assumption of truth. Id. at 1950.

1 In the alternative, because it appears that plaintiff is not prepared to file his pleading in  
2 federal court, plaintiff may seek to voluntarily dismiss this action without prejudice and file anew  
3 once he has sufficient facts to file a pleading in good faith.<sup>3</sup>

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's motion for extension of time (ECF No. 23) is denied; and
- 6 2. Within fourteen days from the date of this order, plaintiff shall file an amended  
7 complaint or a request to voluntarily dismiss this action without prejudice.

8 Dated: September 25, 2017

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10 KENDALL J. NEWMAN  
11 UNITED STATES MAGISTRATE JUDGE

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15 <sup>3</sup> Federal law determines when a claim accrues, and “[u]nder federal law, a claim accrues when  
16 the plaintiff knows or should know of the injury that is the basis of the cause of action.” Douglas  
17 v. Noelle, 567 F.3d 1103, 1109 (9th Cir. 2009) (citation omitted); Maldonado v. Harris, 370 F.3d  
18 945, 955 (9th Cir. 2004). Because section 1983 contains no specific statute of limitations, federal  
19 courts should apply the forum state’s statute of limitations for personal injury actions. Jones v.  
20 Blanas, 393 F.3d 918, 927 (9th Cir. 2004); Maldonado, 370 F.3d at 954. California’s statute of  
21 limitations for personal injury actions was extended to two years effective January 1, 2003. Cal.  
22 Civ. Proc. Code § 335.1; Jones, 393 F.3d at 927; Maldonado, 370 F.3d at 954-55. However, the  
new statute of limitations period does not apply retroactively. Maldonado, 370 F.3d at 955.  
California law also tolls for two years the limitations period for inmates “imprisoned on a  
criminal charge, or in execution under the sentence of a criminal court for a term less than for  
life.” Cal. Civ. Proc. Code § 352.1.

23 Federal courts generally apply the forum state’s law regarding equitable tolling. Fink v.  
24 Shedler, 192 F.3d 911, 914 (9th Cir. 1999). Under California law, however, a plaintiff must meet  
25 three conditions to equitably toll a statute of limitations: (1) he must have diligently pursued his  
26 claim; (2) his situation must be the product of forces beyond his control; and (3) the defendants  
27 must not be prejudiced by the application of equitable tolling. See Hull v. Central Pathology  
28 Serv. Med. Clinic, 28 Cal. App. 4th 1328, 1335, 34 Cal. Rptr. 2d 175 (1994). In addition,  
California’s equitable tolling doctrine “applies when an injured person has several legal remedies  
and, reasonably and in good faith, pursues one.” McDonald v. Antelope Valley Community  
College Dist., 45 Cal. 4th 88, 100, 84 Cal. Rptr. 3d 734 (Cal. 2008) (citation and internal  
quotation marks omitted).