1995 WL 7935
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United States District Court, N.D. California.

Alton Ray LEACH, Plaintiff,
v.
SANTA CLARA COUNTY BOARD OF SUPERVISORS, et al., Defendants.

No. C 94–20438 JW.
|
Jan. 4, 1995.

ORDER OF DISMISSAL WITH PARTIAL LEAVE TO AMEND

INTRODUCTION

***1** Plaintiff, a former pretrial detainee at Santa Clara County Main Jail, has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. Plaintiff also seeks leave to proceed *in forma pauperis.*

Venue is proper in this district as the defendants reside, and a substantial part of the events giving rise to the action occurred, in this district. 28 U.S.C. § 1391(b).

BACKGROUND

Plaintiff's complaint alleges several constitutional violations by his jailers at the Santa Clara County Main Jail: (1) the living conditions at the jail constituted summary punishment without due process, cruel and unusual punishment, and deprived detainees of fair trial rights by impairing their ability to meaningfully participate in the defense of their cases; (2) the censorship of prison mail violated plaintiff's First Amendment rights; (3) the jailers denied detainees access to courts by screening legal mail and interfering with access to telephones and the law library; and (4) due process was denied in disciplinary and administrative proceedings.

Although the caption lists only the Santa Clara County Board of Supervisors and Santa Clara Department of Corrections as defendants, the text of the complaint lists Correctional Director Robert Conroy, Chief Administrative Officer Captain Lombardo, Sergeant Miyabara, Correctional Officer White, Dr. Sloan, and Nurse Delores as defendants. Plaintiff requests declaratory and injunctive relief.

Plaintiff was moved to San Quentin State Prison in mid-September 1994.

DISCUSSION

A. *Standard of Review*
Title 28 U.S.C. § 1915(d) authorizes federal courts to dismiss a claim filed *in forma pauperis* prior to service "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." Under this standard, the court may review the complaint and dismiss *sua sponte* those claims premised on meritless legal theories or that clearly lack any factual basis. *Denton v. Hernandez,* 112 S.Ct. 1728, 1730–31 (1992). *Pro se* pleadings must be liberally construed, however. *Balistreri v. Pacifica Police Dep't,* 901 F.2d 696, 699 (9th Cir.1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins,* 487 U.S. 42, 48 (1988).

B. *Standing.*
A plaintiff does not have standing to complain about the deprivations of the constitutional rights of others. *Jackson v. Official Representatives and Employees of Los Angeles Police Department,* 487 F.2d 885, 886 (9th Cir.1973); *see also Russell v. United States,* 308 F.2d 78, 79 (9th Cir.1962) ("a litigant appearing in propria persona has no authority to represent anyone other than himself").

This limitation is particularly significant in the present case, because many of plaintiff's allegations apparently relate to treatment other inmates received. Plaintiff has no standing to assert the rights of the entire prison population. He may only assert claims for violations of his own constitutional rights.

***2** The requirement that plaintiff have standing also compels a rejection of plaintiff's attempts to maintain a class action. To the extent plaintiff seeks to certify a plaintiff class, the request is denied. The complaint does not adequately identify the group of persons sought to be certified as a plaintiff class, although plaintiff does imply that he desires a plaintiff class. (Complaint, p. 4:28.) Even if the plaintiff class were identifiable, it could not be certified because a prisoner appearing *pro se* is not able to fairly represent and adequately protect the interests of a class—a prerequisite to the maintenance of a class action. Fed.R.Civ.P. 23(a)(4); *see Oxendine v. Williams,* 509 F.2d 1405, 1407 (4th Cir.1975); *Griffin v. Smith,* 493 F.Supp. 129, 131 (W.D.N.Y.1980) (denying class certification on basis that *pro se* prisoner cannot adequately represent class).

Plaintiff also seeks to certify as a *defendant* class all of the nurses who work at the jail. To be certified as a class, "the class [must be] so numerous that joinder of all members is impracticable." Fed.R.Civ.P. 23(a)(1). Plaintiff only has standing to assert claims against persons who violated *his* constitutional rights and the number of nurses who have allegedly violated this plaintiff's constitutional rights is not so numerous that joinder of each as a defendant is impracticable. Indeed, the complaint only mentions one nurse who dealt with plaintiff. Because the proposed defendant class falters on the threshold issue of numerosity, the court need not further consider the propriety of such a class action.

C. *Defendants' Liability.*

An individual defendant is liable for money damages under Section 1983 only if the plaintiff can show that the defendant personally participated in or otherwise proximately caused the unconstitutional deprivations of which he complains. *Leer v. Murphy,* 844 F.2d 628, 634 (9th Cir.1988). A person deprives another of a constitutional right within the meaning of Section 1983 if he does an affirmative act, participates in another's affirmative act, or omits to perform an act which he is legally required to do, thereby causing the constitutional injury. *Leer,* 844 F.2d at 633. The inquiry into causation must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation. *Id.*

Respondeat superior is not a sufficient basis for imposing liability under Section 1983. *Monell v. New York City Dep't of Social Services,* 436 U.S. 658, 663–64 n. 7 (1978); *Ybarra v. Reno Thunderbird Mobile Home Village,* 723 F.2d 675, 680 (9th Cir.1984). A plaintiff must allege one of the following: (1) the defendant personally participated in or ordered the constitutional violation; (2) the defendant, acting in a supervisory capacity, failed to properly train or supervise personnel, resulting in the violation; (3) the defendant was responsible for an official policy or custom which caused the violation; or (4) the defendant knew of the violation and failed to prevent it. *See Taylor v. List,* 880 F.2d 1040, 1045 (9th Cir.1989); *Ybarra v. Reno Thunderbird Mobile Home,* 723 F.2d 675, 680 (9th Cir.1984).

***3** Plaintiff fails to connect any particular defendant, other than Corrections Officer White, to any alleged constitutional violation. Plaintiff's allegation that each defendant was the agent of every other defendant does not cure the problem. He must identify each defendant who allegedly violated his constitutional rights and describe the acts or omissions of each such defendant that constituted a violation. In short, plaintiff must show the link between each defendant and each constitutional violation plaintiff suffered. Of course, not all defendants need be linked to every violation.

D. *Mootness of Claims for Injunctive Relief.*

A claim is considered moot if it has lost its character as a present, live controversy, and if no effective relief can be granted: "Where the question sought to be adjudicated has been mooted by developments subsequent to filing of the complaint, no justiciable controversy is presented." *Flast v. Cohen,* 392 U.S. 83, 95 (1968); *see also Aguirre v. S.S. Sohio Intrepid,* 801 F.2d 1185, 1189 (9th Cir.1986). When an inmate has been transferred to another prison and therefore there is no reasonable expectation nor demonstrated probability that he again will be subjected to the prison conditions from which he seeks injunctive relief, the claim for injunctive relief may be dismissed as moot. *See Darring v. Kincheloe,* 783 F.2d 874, 876–77 (9th Cir.1986); *Wiggins v. Rushen,* 760 F.2d 1009, 1010–11 (9th Cir.1985).

In September 1994, plaintiff was moved from the Santa Clara County Main Jail to San Quentin State Prison. His request for injunctive relief regarding the conditions at the Santa Clara County Main Jail are now moot. The transfer

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of plaintiff to another facility would not automatically render moot a request for money damages, but plaintiff has not requested money damages.

E. *Legal Claims*

1. *Conditions of Confinement (First, Third and Seventh Claims for Relief).*

Plaintiff alleges that the conditions at the Santa Clara County Main Jail (the "jail") are so bad as to constitute summary punishment without due process, deprive a pretrial detainee of the ability to meaningfully participate in his defense, and constitute cruel and unusual punishment.

It is settled that the pretrial incarceration does not automatically constitute impermissible summary punishment. *United States v. Salerno,* 481 U.S. 739, 746, 107 S.Ct. 2095 (1987). Plaintiff has no Section 1983 claim merely because he was detained pending trial.

A conditions-of-confinement claim for a pretrial detainee arises under the Due Process Clause of the Fourteenth Amendment and not under the Eighth Amendment prohibition against cruel and unusual punishment. *See Jones v. Johnson,* 781 F.2d 769, 771 (9th Cir.1986).[1] The Eighth Amendment guarantees do, however, provide a minimum standard of care for determining one's rights as a pretrial detainee. *Id.* A conditions-of-confinement claim has both a subjective and objective component. *Hudson v. McMillian,* 112 S.Ct. 995, 1000 (1992). Under the subjective component, a prisoner must demonstrate that prison officials were deliberately indifferent to the allegedly unconstitutional prison conditions. *Wilson v. Seiter,* 111 S.Ct. 2321, 2326–27 (1991). The objective component of the claim is "contextual." *Hudson,* 112 S.Ct. at 1000. Thus, "[s]ome conditions of confinement may establish [a] ... violation 'in combination' when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise —for example, a low cell temperature at night combined with a failure to issue blankets." *Wilson, supra,* 111 S.Ct. at 2327. Under this contextual approach, conditions that might be deemed cruel and unusual if they were permanent feature of a prisoner's life might not be constitutional violations if they are imposed only temporarily. "A filthy, overcrowded cell and a diet of 'grue[l]' might be tolerable for a few days and intolerably cruel for weeks or months." *Hutto v. Finney,* 437 U.S. 678, 686–87 (1978).

***4** Plaintiff has not adequately pled a Section 1983 claim based on the conditions of confinement. Plaintiff makes conclusory allegations with no supporting facts regarding the generally inadequate medical care, impairment of fair trial rights, and the lack of proper heating, cooling and ventilation. Conclusory allegations such as these are insufficient to state a claim for relief under Section 1983. Although plaintiff describes in more detail the conditions of the holding cells at court, he does not state whether such conditions (e.g., overcrowding so severe that fights break out, broken drinking faucets, broken toilets, and uncleanliness) existed when he was in the holding cell, nor does he describe the length of time (if any) he was subjected to such conditions. Plaintiff must allege facts showing his personal experience with these alleged problems to establish his standing. Additionally, he must identify each defendant who, through act or omission, is sought to be held liable for a violation of plaintiff's constitutional rights.

2. *Bail (Second Claim for Relief).*

Plaintiff alleges that the system of pretrial bail violates the equal protection guarantees of the Fourteenth Amendment by treating rich and poor arrestees differently, and requests a declaratory judgment to that effect. These allegations do not present a cognizable claim for two reasons.

First, California's system for pretrial bail is not set up as plaintiff alleges. Plaintiff's complaint assumes that bail for each offense is set at a high, predetermined, unchangeable amount. Although each county in California sets a general schedule of bail (Penal Code § 1269b(c)), that amount may be reduced or avoided. Penal Code Section 1289 permits the reduction of bail on a showing of good cause. Penal Code Section 1270 permits a magistrate to release an arrestee on his own recognizance if he has been arrested for a bailable offense. The availability of a reduction or elimination of bail shows that there is no systemic equal protection violation.

Second, permitting plaintiff's bail claim to proceed would require this court to interfere with ongoing state criminal proceedings, which it declines to do. Under principles of comity and federalism, a federal court should not interfere with ongoing state criminal

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proceedings by granting injunctive or declaratory relief except under special circumstances. *Younger v. Harris,* 401 U.S. 37 (1971); *Samuels v. Mackell,* 401 U.S. 66 (1971). Federal courts should not enjoin pending state criminal prosecutions absent a showing of the state's bad faith or harassment, or a showing that the statute challenged is "flagrantly and patently violative of express constitutional prohibitions." *Younger,* 401 U.S. at 46, 53–54 (cost, anxiety and inconvenience of criminal defense not kind of special circumstances or irreparable harm that would justify federal court intervention; statute must be unconstitutional in every "clause, sentence and paragraph, and in whatever manner" it is applied). *Younger* abstention is required when: (1) state proceedings, judicial in nature, are pending; (2) the state proceedings involve important state interests; and (3) the state proceedings afford adequate opportunity to raise the constitutional issue. *Middlesex County Ethics Comm. v. Garden State Bar Ass'n,* 457 U.S. 423, 432 (1982); *Dubinka v. Judges of the Superior Court,* 23 F.3d 218, 223 (9th Cir.1994). The rationale of *Younger* applies throughout appellate proceedings, requiring that state appellate review of a state court judgment be exhausted before federal court intervention is permitted, *Huffman v. Pursue, Ltd.,* 420 U.S. 592, 607–11 (1975); *Dubinka,* 23 F.3d at 223 (even if criminal trials were completed at time of abstention decision, state court proceedings still considered pending). Dismissal, rather than retention of jurisdiction, is required where, as here, *Younger* abstention is appropriate. *Judice v. Vail,* 430 U.S. 327, 348 (1977); *see also Beltran v. California,* 871 F.2d 777, 782 (9th Cir.1988). Plaintiff may raise his equal protection challenge to bail in the pending state criminal action.

3. *Denial of Access to Courts (Fourth Claim for Relief).*

***5** Plaintiff's complaint that his access to court was denied because his access to law books was restricted is legally meritless. He alleges that counsel was appointed to represent him. The state officials' duty to provide plaintiff meaningful access to the court was satisfied by the appointment of counsel. *Lindquist v. Idaho State Board of Corrections,* 776 F.2d 851, 854 (9th Cir.1985).

Plaintiff's other claims regarding denial of access to the courts and counsel are so lacking in detail that the court cannot determine whether his claims are meritorious under Section 1983. As with almost all of plaintiff's claims, the sweeping generalizations must be replaced with specific allegations about violations of this plaintiff's constitutional rights. He must allege, with respect to each instance of denial of access to the courts, which defendant(s) denied Mr. Leach access to the courts and how each such defendant did so.

4. *Interference With Mail (Fifth Claim for Relief).*

Plaintiff claims that unspecified defendants opened and delayed mail as well as sent the mail back in retaliation for filing grievances for interference with the mail. Defendants allegedly interfered with both regular and legal mail. The complaint is so lacking in specifics that a claim for relief has not been stated. Plaintiff must state whether the mail being opened is confidential mail or other mail, whether the mail opened is read, whether the mail is incoming or outgoing mail, how long any delivery is delayed, whether the delays occur with legal or other mail, and which defendant(s) are interfering with plaintiff's mail. Plaintiff must amend his complaint to provide these details as to each instance of interference with mail directed to or sent by plaintiff.

Finally, to the extent plaintiff claims the interference with the mail has caused a denial of access to the courts, he must allege the specific instance(s) in which he was actually denied access to the court. *Sands v. Lewis,* 886 F.2d 1166, 1171 (9th Cir.1989). For example, mere delay in sending court filings would not be enough if the papers were nevertheless timely filed or accepted and considered by the court. *See Magee v. Waters,* 810 F.2d 451, 452 (4th Cir.1987).

5. *Denial of Due Process in Disciplinary and Administrative Proceedings (Sixth Claim for Relief).*

The Fourteenth Amendment protects individuals from arbitrary government action: no state shall deprive any person of life, liberty or property without due process of law. Prisoners retain their right to due process subject to the restrictions imposed by the nature of the penal system. *Wolff v. McDonnell,* 418 U.S. 539, 556 (1974). Although prison disciplinary proceedings are not part of a criminal prosecution and the full panoply of rights due a defendant in a criminal prosecution does not apply, where serious rules violations are alleged and the sanctions to be applied are loss of good-time credits and/or isolation and said sanctions are state-protected liberty interests, the Due Process Clause requires certain minimum procedural protections. *Id.* at 556–57, 571–72 n. 19. These minimum

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procedural protections have also been extended to where the sanction to be applied is disciplinary segregation (*see Conner v. Sakai,* 15 F.3d 1463, 1466–68 (9th Cir.1994)); however, they are not appropriate for the imposition of lesser sanctions, such as the loss of privileges, *Wolff,* 418 U.S. at 571–72 n. 19.

***6** Prisoners must be afforded those procedures mandated by *Wolff* and its progeny, but the Due Process Clause does not require that a prison comply with the prison's own, more generous procedures. *Walker v. Sumner,* 14 F.3d 1415, 1419–20 (9th Cir.1994). "[I]f state procedures rise above the floor set by the due process clause, a state could fail to follow its own procedures yet still provide sufficient process to survive constitutional scrutiny." *Rogers v. Okin,* 738 F.2d 1, 8 (1st Cir.1984); *accord Bostic v. Carlson,* 884 F.2d 1267, 1270 (9th Cir.1989). A prisoner's right to due process is violated "only if he [is] not provided with process sufficient to meet the *Wolff* standard." *Walker v. Sumner, supra,* 14 F.3d at 1420.

The complaint alleges, in conclusory fashion, that punishment was imposed on detainees without notice or an opportunity to be heard. The complaint fails to identify any discipline that has been imposed on plaintiff Leach without notice and an opportunity to be heard. Conclusory allegations are insufficient to state a claim for relief under Section 1983. Plaintiff shall amend to attempt to allege sufficient facts, if they exist, to state a claim for relief.

6. *Inadequate Medical Care (Eighth Claim for Relief).* Deliberate indifference to serious medical needs presents a cognizable claim for violation of the Eighth Amendment proscription of cruel and unusual punishment. *Estelle v. Gamble,* 429 U.S. 97, 104 (1976); *McGuckin v. Smith,* 974 F.2d 1050, 1059 (9th Cir.1992); *Jones v. Johnson,* 781 F.2d 769, 771 (9th Cir.1986). A "serious" medical need exists if the failure to treat a prisoner's condition could result in further significant injury or the "unnecessary and wanton infliction of pain." *Id.* (citing *Estelle v. Gamble,* 429 U.S. at 104). The existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain are examples of indications that a prisoner has a "serious" need for medical treatment. *Id.* at 1059–60 (citing *Wood v. Housewright,* 900 F.2d 1332, 1337–41 (9th Cir.1990); *Hunt v. Dental Dept.,* 865 F.2d 198, 100–01 (9th Cir.1989). In order for deliberate indifference to be established, there must be a purposeful act or failure to act on the part of the defendant. *McGuckin,* 974 F.2d at 1060. Mere negligence or even gross negligence is not actionable. *Farmer v. Brennan,* 114 S.Ct. 1970, 1978 & n. 4 (1994). Second, a prisoner can make no claim for deliberate indifference unless the denial of medical care was harmful. *Id.; Shapley v. Nevada Board of State Prison Commissioners,* 766 F.2d 404, 407 (9th Cir.1985).

The facts alleged in plaintiff's complaint, liberally construed, state a claim for relief for deliberate indifference to serious medical needs by corrections officer White (Badge No. 2038). Corrections officer White allegedly refused to call for medical help when plaintiff "complained he felt a seizure coming on." However, plaintiff did not list White as a defendant in his complaint. If plaintiff wishes to assert a claim against corrections officer White, he must list White as a defendant in the case caption on the first page of any amended complaint.

***7** Plaintiff alleges that on a separate occasion, an unidentified nurse acted with "neglect" by ignoring a "life-threatening seizure" plaintiff was experiencing. Negligent conduct does not constitute deliberate indifference to serious medical needs. Thus, plaintiff has failed to state a claim for relief against the unidentified nurse.

Plaintiff's general comments that the medical care at the jail is inadequate are insufficient to state any claim for relief. Plaintiff must identify specific defendants and the acts or omissions of each which constituted deliberate indifference to *his* serious medical needs if he wishes to assert any other claims regarding the medical treatment he received at the jail.

7. *Violations of State Law (Ninth Claim for Relief).* Section 1983 does not impose liability for violation of duties of care arising out of state tort law or state statutes. *DeShaney v. Winnebago County Social Services Department,* 489 U.S. 189, 201–03, 109 S.Ct. 998 (1989) (state tort law); *Barry v. Fowler,* 902 F.2d 770, 772 (9th Cir.1990) (state statute). There must be a specific constitutional guarantee safeguarding the interests that have been invaded. *Paul v. Davis,* 424 U.S. 693, 697, 96 S.Ct. 1155 (1976).

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Plaintiff's complaint alleges several violations of state law which are not cognizable in this Section 1983 action. Accordingly, the court dismisses without leave to amend the Seventh Claim for Relief, including its claims for failure to provide a round-the-clock physician at the jail, failure to inspect the jail in compliance with California Penal Code § 6031.1, failure to keep track of discipline imposed on prisoners in compliance with California Penal Code § 4019.5(e), failure to bring plaintiff before a magistrate within two days in compliance with California Penal Code § 825, and a general failure to comply with the minimum standards of Title 15 of the California Code of Regulations.

8. *Retaliation.*

Plaintiff claims that several actions were taken by defendants in retaliation after he provided legal assistance to other detainees and filed grievances. As with plaintiff's other claims, the lack of detail prevents the court from determining whether a claim for relief has been stated. Plaintiff must identify the defendant(s) who retaliated against him, and describe what those defendants did and what his activity was that prompted the retaliation.

CONCLUSION

For the foregoing reasons,

1. Plaintiff's requests for injunctive relief are DENIED because his transfer to San Quentin has rendered the requests moot.

2. Plaintiff's request for leave to proceed *in forma pauperis* will be held under submission until the time for filing an amended complaint has passed.

3. The following claims for relief are DISMISSED with leave to amend:

a. First Claim for Relief (conditions of confinement as summary punishment in violation of due process clause).

b. Third Claim for Relief (conditions of confinement leading to deprivation of fair trial rights).

***8** c. Fourth Claim for Relief (denial of access to courts). However, the plaintiff may not assert a denial of access to the law library in his amended complaint because that claim is DISMISSED without leave to amend.

d. Fifth Claim for Relief (interference with the prison mail).

e. Sixth Claim for Relief (denial of due process in disciplinary and administrative proceedings).

f. Eighth Claim for Relief (deliberate indifference to serious medical needs).

g. A claim for retaliation by defendants for plaintiff's exercise of his First Amendment rights.

4. Any amended complaint shall be filed within thirty (30) days from the date of this Order. Failure to amend within this time shall result in the dismissal of these claims.

5. Plaintiff's Second Claim for Relief, based on an alleged violation of the equal protection clause, is DISMISSED without leave to amend.

6. Plaintiff's Seventh Claim for Relief, based on an alleged violation of the Eighth Amendment's proscription against cruel and unusual punishment, is DISMISSED without leave to amend. (See footnote 1, *supra.*)

7. Plaintiff's Ninth Claim for Relief, for various violations of California law, is DISMISSED without leave to amend.

8. Plaintiff shall list in the case caption on the first page of his amended complaint all the defendants against whom he seeks relief. Merely mentioning their names in the body of the complain is not sufficient.

9. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address and must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp., 1995 WL 7935

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Footnotes

1 A pretrial detainee is not protected by the Eighth Amendment's proscription against cruel and unusual punishment because he has not been convicted of a crime. *Bell v. Wolfish,* 441 U.S. 520, 535 & n. 16, 99 S.Ct. 1861 (1979); *Ingraham v. Wright,* 430 U.S. 651, 671–72 n. 40, 97 S.Ct. 1401 (1977). Instead, the pretrial detainee is protected from punishment without due process under the Fourteenth Amendment. *City of Revere v. Massachusetts General Hosp.,* 463 U.S. 239, 244, 103 S.Ct. 2979 (1983); *Gary H. v. Hegstrom,* 831 F.2d 1430, 1432 (9th Cir.1987). Because the Eighth Amendment does not apply to a pretrial detainee, the court will dismiss without leave to amend the Seventh Claim for Relief, which is based on an alleged Eighth Amendment violation. This dismissal has no practical effect on plaintiff because the factual basis for the Seventh Claim for Relief is the same as for the First Claim for Relief, which is based on an alleged due process violation.

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