

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Spearman v. La Superior

No. 2:25-cv-0237-JDP (P), Findings and Recommendations (E.D. Cal. Apr. 15, 2025) · No. 2:25-cv-0237-JDP (P) · Decided April 16, 2025

SUMMARY

The court screens a former prisoner’s 42 U.S.C. § 1983 complaint alleging that a La Superior supermarket employee assaulted him. The magistrate judge concludes that the defendants are not alleged to be state actors, that the plaintiff is subject to the three-strikes provision of 28 U.S.C. § 1915(g), and recommends dismissal without leave to amend and denial of in forma pauperis status.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 16, 2025
DOCKET	2:25-cv-0237-JDP (P)
DISPOSITION	other
PROCEDURAL POSTURE	A former prisoner filed a pro se 42 U.S.C. § 1983 complaint and applied to proceed in forma pauperis. The magistrate judge screened the complaint and issued findings and recommendations that the action be dismissed without leave to amend and that the in forma pauperis application be denied.
STANDARD OF REVIEW	The complaint was reviewed under the screening requirements applicable to in forma pauperis actions and the Rule 8(a)(2) plausibility standard, accepting well-pleaded allegations while disregarding conclusory legal assertions. A pro se complaint was construed liberally, but the court could not supply essential elements that were not pleaded.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

[section 1983](#) [prisoners rights](#) [pleadings](#) [civil procedure](#)

PRACTICE AREAS

civil rights

prisoner litigation

federal civil procedure

QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable claim under 42 U.S.C. § 1983 when it alleged assault by a private supermarket employee without alleging state action.
2. Whether plaintiff could proceed in forma pauperis despite being a three-striker under 28 U.S.C. § 1915(g).
3. Whether the complaint should be dismissed without leave to amend.

HOLDINGS

1. The complaint failed to state a cognizable § 1983 claim because it did not allege that La Superior or its employee acted under color of state law.
2. Plaintiff could proceed in forma pauperis only if he showed that he was in imminent physical danger, and the complaint did not make that showing because its allegations were non-cognizable.
3. Dismissal without leave to amend was appropriate because plaintiff could not state a cognizable § 1983 claim without changing the fundamental nature of his allegations.

KEY QUOTATIONS

“[T]he under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful” (at 2)

“A complaint must contain a short and plain statement that plaintiff is entitled to relief,” (at 1)

FACTUAL BACKGROUND

Plaintiff, a former prisoner, alleged that an employee of the La Superior supermarket physically assaulted him. He did not allege that the supermarket or its employee was a state actor. The court also found that plaintiff had at least three prior actions dismissed for failure to state a claim and therefore qualified as a three-striker under § 1915(g).

PROCEDURAL HISTORY

Plaintiff alleged that an employee of the La Superior supermarket assaulted him. On screening, the court concluded that the complaint did not allege state action and therefore failed to state a cognizable § 1983 claim. The court also determined that plaintiff was a three-striker under 28 U.S.C. § 1915(g) and had not shown imminent danger. The magistrate judge recommended dismissal without leave to amend and denial of in forma pauperis status, subject to objections and review by an assigned district judge.

DISPOSITION

other

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Kobold v. Good Samaritan Reg'l Med. Ctr., 832 F.3d 1024, 1038 (9th Cir. 2016)
- Nagrampa v. MailCoups, Inc., 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)
- Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam)
- Hayes v. Idaho Corr. Ctr., 849 F.3d 1204, 1208 (9th Cir. 2017)
- Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)
- Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
- Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 REGINALD EDWARD SPEARMAN, Case No. 2:25-cv-0237-JDP (P) 12
Plaintiff, 13 v. ORDER; FINDINGS AND RECOMMENDATIONS 14 LA SUPERIOR, 15
Defendant. 16 17 18 Plaintiff, a former prisoner, brings this section 1983 action against the La
Superior 19 supermarket, alleging that one of its employees assaulted him.

ECF No. 1 at 1. These allegations 20 do not state a cognizable section 1983 claim because the
defendant is not alleged to be a state 21 actor. Additionally, plaintiff is a “three-striker” within the
meaning of Title 28 U.S.C. § 1915(g). 22 And, given that his section 1983 claim is non-
cognizable, he cannot meet the imminent danger 23 exception that would allow him to proceed in
forma pauperis, as he requests, ECF No. 5.

24 Accordingly, I recommend that this action be dismissed for failure to state a cognizable claim
and 25 his application to proceed in forma pauperis be denied. 26 27 28 1 2 Screening Order 3 I.
Screening and Pleading Requirements 4 A federal court must screen the complaint of any claimant
seeking permission to proceed 5 in forma pauperis. See 28 U.S.C. § 1915(e).

The court must identify any cognizable claims and 6 dismiss any portion of the complaint that is
frivolous or malicious, fails to state a claim upon 7 which relief may be granted, or seeks monetary
relief from a defendant who is immune from such 8 relief. Id. 9 A complaint must contain a short
and plain statement that plaintiff is entitled to relief, 10 Fed.

R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its 11
face,” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The plausibility standard does not 12
require detailed allegations, but legal conclusions do not suffice. See Ashcroft v. Iqbal, 556 U.S.

13 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere 14 possibility of misconduct,” the complaint states no claim.

Id. at 679. The complaint need not 15 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 16 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that 17 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 18 n.2 (9th Cir. 2006) (en banc) (citations omitted).

19 The court must construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404 20 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it 21 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which 22 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir.

2017). 23 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements 24 of the claim that were not initially pled.”” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 25 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 26 27 28 1 II. Analysis 2 Plaintiff alleges that an employee of La Superior, a supermarket, physically assaulted him.

3 ECF No. 1 at 1. Neither the supermarket nor its employee is alleged to be a state actor. See *Am. 4 Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (“[T]he under-color-of-state-law element 5 of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or 6 wrongful....”) (internal quotation marks omitted).

Accordingly, this action cannot proceed. 7 I find it appropriate to dismiss this action without leave to amend because plaintiff cannot 8 state a cognizable section 1983 claim without changing the fundamental nature of his allegations. 9 Additionally, plaintiff is a “three-striker” within the meaning of section 1915(g). He has filed at 10 least three actions that have been dismissed for failure to state a claim: (1) *Spearman v. B-Side* 11 Bar, No. 2:21-cv-01216-KJM-DMC (E.D.

Cal) at ECF Nos. 10 & 12; (2) *Spearman v. Sam Berri* 12 Towing, et al., No. 2:21-cv-01288-KJM-JDP (E.D. Cal) at ECF Nos. 7 & 8; (3) *Spearman v. 13 Sacramento County*, et al., No. 2:21-cv-01289-TLN-JDP (E.D. Cal) at ECF Nos. 10 & 11.

Thus, 14 he can only proceed in forma pauperis if he makes a showing that he is in imminent physical 15 danger. The claims fail to make this showing insofar as they are non-cognizable. 16 Accordingly, it is ORDERED that the Clerk of Court shall assign a district judge to this 17 action. 18 Further, it is RECOMMENDED that: 19 1.

The complaint, ECF No. 1, be DISMISSED without leave to amend for failure to state 20 a cognizable section 1983 claim. 21 2. Plaintiff’s application to proceed in forma pauperis, ECF No.

5, be DENIED. 22 These findings and recommendations are submitted to the United States District Judge 23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within fourteen days of 24 service of these findings and recommendations, any party may file written objections with the 25 court and serve a copy on all parties. Any such document should be captioned “Objections to 26 Magistrate Judge’s Findings and Recommendations,” and any response shall be served and filed 27 within fourteen days of service of the objections.

The parties are advised that failure to file 28 objections within the specified time may waive the right to appeal the District Court’s order. See 1 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Yist, 951 F.2d 1153 (9th Cir. 2 | 1991). 3 4 | ITIS SO ORDERED. 5 _ 6 | Dated: _ April 15, 2025 Jessen (Oise JEREMY D. PETERSON 7 UNITED STATES MAGISTRATE JUDGE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28