

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Hilbert Thomas v. Oak Smith, et al.

No. 23-cv-05617-JSC, United States District Court for the Northern District of California (April 17, 2025)

SUMMARY

The United States District Court for the Northern District of California granted Plaintiff Hilbert Thomas’s motion to proceed only on the retaliation claim in his First Amended Complaint and dismissed the remaining claims with prejudice. The Court set deadlines for Defendants’ summary judgment motion, Plaintiff’s opposition, and Defendants’ reply, and included the required Rand summary-judgment warning.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jacqueline Scott Corley
JURISDICTION	United States District Court for the Northern District of California
DECIDED	April 17, 2025
DOCKET	23-cv-05617-JSC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to proceed with his First Amended Complaint solely on his retaliation claim instead of filing a Second Amended Complaint, after the court granted defendants' motion to dismiss the other claims and granted leave to amend.
PRECEDENTIAL VALUE	Unpublished district court order; limited persuasive value.

TOPICS

- section 1983
- civil rights
- pleadings
- motions to dismiss
- summary judgment

PRACTICE AREAS

- civil procedure
- civil rights
- prisoner litigation

QUESTIONS PRESENTED

1. Whether plaintiff could elect to proceed on the retaliation claim in his First Amended Complaint rather than file a Second Amended Complaint.
2. Whether the other claims in the First Amended Complaint should be dismissed with prejudice.
3. What schedule and procedural requirements should govern defendants' anticipated motion for summary judgment.

HOLDINGS

1. The court granted plaintiff's motion to proceed only with the retaliation claim in his First Amended Complaint.
2. The claims other than the retaliation claim were dismissed with prejudice.

KEY QUOTATIONS

“Plaintiff’s motion to proceed only with the retaliation claim in his First Amended Complaint is GRANTED. The other claims in the First Amended Complaint are DISMISSED with prejudice.” (at 1)

“Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case.” (at 2)

FACTUAL BACKGROUND

Plaintiff is a California prisoner who filed a civil-rights action under 42 U.S.C. § 1983. Defendants' motion to dismiss the First Amended Complaint was granted, with leave for plaintiff to file a Second Amended Complaint; the retaliation claim was not included in the dismissal request. Plaintiff chose not to file a Second Amended Complaint and sought to proceed only on the retaliation claim in the First Amended Complaint.

PROCEDURAL HISTORY

Plaintiff, a California prisoner proceeding pro se, brought a civil-rights action under 42 U.S.C. § 1983. The court previously granted defendants' motion to dismiss the First Amended Complaint and allowed plaintiff to file a Second Amended Complaint, while advising that failure to amend would leave the retaliation claim as the operative claim. Plaintiff elected to proceed only on that retaliation claim. The court granted his motion, dismissed the remaining claims with prejudice, and set a schedule for defendants' anticipated summary-judgment motion.

DISPOSITION

other

CASES CITED

- Rand v. Rowland, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc)
- Woods v. Carey, 684 F.3d 934, 940-941 (9th Cir. 2012)

OPINION

Thomas v. Smith

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 HILBERT THOMAS, Case No. 23-cv-05617-JSC 8 Plaintiff,

ORDER GRANTING MOTION TO

9 v. PROCEED WITH FIRST AMENDED

COMPLAINT

10 OAK SMITH, et al., Re: Dkt. No. 57 Defendants. 11 12 Plaintiff, a California prisoner
proceeding without representation by an attorney, filed this 13 civil rights action under 42 U.S.C. §
1983. Defendants' motion to dismiss Plaintiff's First 14 Amended Complaint was granted, and
Plaintiff was granted leave to file a Second Amended 15 Complaint. (ECF No. 56.) As
Defendants' motion did not seek dismissal of Plaintiff's retaliation 16 claim, Plaintiff was advised
that his failure to file a Second Amended Complaint "will result in the 17 First Amended
Complaint being the operative complaint, and the case proceeding only with his 18 retaliation
claim." (Id. at 9:27-10:1.) Plaintiff has filed a motion to proceed with his First 19 Amended
Complaint¹ in which he indicates he does not intend to file a Second Amended 20 Complaint and
instead wishes to proceed only with the retaliation claim in his First Amended 21 Complaint. (ECF
No. 57.) 22 Good cause appearing, 23 1. Plaintiff's motion to proceed only with the retaliation
claim in his First Amended 24 Complaint is GRANTED. The other claims in the First Amended
Complaint are DISMISSED 25 with prejudice. 26 27 1 The docket incorrectly labels this motion
as a "Motion to Amend/Correct Order on Motion to 1 2. No later than July 14, 2025, Defendants
shall file a motion for summary judgment 2 || on. The motion shall be supported by adequate
factual documentation and shall conform in all 3 respects to Federal Rule of Civil Procedure 56
and shall include as exhibits all records and 4 || incident reports stemming from the events at issue.
If Defendants are of the opinion that this case 5 cannot be resolved by summary judgment, they
shall so inform the Court prior to the date the 6 summary judgment motion is due. All papers filed
with the Court shall be promptly served on 7 Plaintiff. 8 At the time the dispositive motion is
served, Defendants shall also serve, on a separate g || Paper, the appropriate notice required by
Rand v. Rowland, 154 F.3d 952, 953-954 (9th Cir. 1998) 10 (en banc). See Woods v. Carey, 684
F.3d 934, 940-941 (9th Cir. 2012). 11 Plaintiff's opposition to the dispositive motion, if any, shall be
filed with the Court and 12 served upon Defendants no later than August 11, 2025. Plaintiff must
read the attached page E 3 headed "NOTICE -- WARNING," which is provided to him pursuant to
Rand v. Rowland, 154 S 4 F.3d 952, 953-954 (9th Cir. 1998) (en banc). 13 15 Defendants shall file
a reply brief no later than August 25, 2025. 16 The motion shall be deemed submitted as of the
date the reply brief is due. No hearing 17 will be held on the motion unless the Court so orders at a

later date. 5 ig 3. This order resolves docket number 57. IT IS SO ORDERED. Dated: April 17, 2025 20 21 , ne 22 agus SCOTT Hot 3 United States District Judge 24 25 26 27 28

1 NOTICE -- WARNING (SUMMARY JUDGMENT)

2 If Defendants move for summary judgment, they are seeking to have your case dismissed. 3 A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if 4 granted, end your case.

5 Rule 56 tells you what you must do in order to oppose a motion for summary judgment.

6 Generally, summary judgment must be granted when there is no genuine issue of material fact-- 7 that is, if there is no real dispute about any fact that would affect the result of your case, the party 8 who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly 9 supported by declarations (or other sworn testimony), you cannot simply rely on what your 10 complaint says. Instead, you must set out specific facts in declarations, depositions, answers to 11 interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts 12 shown in Defendant's declarations and documents and show that there is a genuine issue of 13 material fact for trial. If you do not submit your own evidence in opposition, summary judgment, 14 if appropriate, may be entered against you. If summary judgment is granted, your case will be 15 dismissed and there will be no trial. 16 17 18 19 20 21 22 23 24 25 26 27