

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Whitsitt v. Domus Management Co.

Whitsitt · No. 2:24-cv-0407-DC-JDP (PS) · Decided February 24, 2025

OPINION

(PS) Whitsitt v. Domus Management Co

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 WILLIAM J. WHITSITT, Case No. 2:24-cv-0407-DC-JDP (PS) 12 Plaintiff, 13 v. ORDER
14 DOMUS MANAGEMENT CO., et al., 15 Defendants. 16 17 Plaintiff alleges that defendants
Domus Management Company, Housing Authority of the 18 County of San Joaquin, Erica Perez,
Casa Manana Inn, and the United States violated his 19 constitutional rights. As articulated, the
complaint does not state a viable claim. Therefore, I will 20 dismiss the complaint with leave to
amend. Plaintiff's application to proceed in forma pauperis 21 makes the required showing and
will be granted. 22 Screening and Pleading Requirements 23 A federal court must screen the
complaint of any claimant seeking permission to proceed 24 in forma pauperis. See 28 U.S.C. §
1915(e). The court must identify any cognizable claims and 25 dismiss any portion of the
complaint that is frivolous or malicious, fails to state a claim upon 26 which relief may be granted,
or seeks monetary relief from a defendant who is immune from such 27 relief. *Id.* 28 A complaint
must contain a short and plain statement that plaintiff is entitled to relief, 1 Fed. R. Civ. P. 8(a)(2),
and provide "enough facts to state a claim to relief that is plausible on its 2 face," *Bell Atl. Corp.*
v. Twombly, 550 U.S. 544, 570 (2007). The plausibility standard does not 3 require detailed
allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S. 4 662, 678
(2009). If the allegations "do not permit the court to infer more than the mere 5 possibility of
misconduct," the complaint states no claim. *Id.* at 679. The complaint need not 6 identify "a
precise legal theory." *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024, 7 1038 (9th Cir.
2016). Instead, what plaintiff must state is a "claim"—a set of "allegations that 8 give rise to an
enforceable right to relief." *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 9 n.2 (9th Cir.
2006) (en banc) (citations omitted). 10 The court must construe a pro se litigant's complaint
liberally. See *Haines v. Kerner*, 404 11 U.S. 519, 520 (1972) (per curiam). The court may dismiss
a pro se litigant's complaint "if it 12 appears beyond doubt that the plaintiff can prove no set of
facts in support of his claim which 13 would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849
F.3d 1204, 1208 (9th Cir. 2017). 14 However, "'a liberal interpretation of a civil rights complaint

may not supply essential elements 15 of the claim that were not initially pled.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 16 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 17 Analysis 18 Plaintiff alleges that defendant San Joaquin County Housing Authority found him eligible 19 for subsidized housing, but that defendant Domus Management Company denied his housing 20 application to Casa Manana Apartments. ECF No. 1 at 1-3. Plaintiff claims that he did not 21 receive notice as to why his application was denied by Domus. *Id.* at 3. He further claims that 22 there is a conspiracy between Domus, federal and state housing authorities, and Erica Perez of the 23 San Joaquin County Housing Authority. *Id.* at 2, 4. 24 He brings claims under 42 U.S.C. § 1983 and Racketeer Influenced and Corrupt 25 Organizations Act (“RICO”). Specifically, plaintiff claims that defendants (1) denied his right to 26 housing; (2) violated his substantive due process rights when he was denied housing without a 27 hearing and prior notice; (3) failed to protect his rights; (4) retaliated against him for his RICO 28 claims; (5) denial of his right to contract; and (6) housing discrimination. 1 Plaintiff’s complaint fails to state a claim. As a sovereign, the United States is immune 2 from suit unless it has consented to suit and waived immunity. *United States v. Mitchell*, 463 3 U.S. 206, 212 (1983). “A waiver of sovereign immunity cannot be implied but must be 4 unequivocally expressed.” *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (internal quotation 5 marks and citation omitted). “The party who sues the United States bears the burden of pointing 6 to such an unequivocal waiver of immunity.” *Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 7 1983). Because the United States “has not waived its sovereign immunity in actions seeking 8 damages for constitutional violations” plaintiff’s claim against the United States fails. See 9 *Thomas-Lazear v. F.B.I.*, 851 F.2d 1202, 1207 (9th Cir. 1988). 10 Plaintiff’s claims against defendants Domus Management Company, Erica Perez, or Casa 11 Manana Inn are also not cognizable. Plaintiff must allege that each was acting under the color of 12 state law in order to sue them under 42 U.S.C. § 1983. See *West v. Atkins*, 487 U.S. 42, 48 13 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987) (“A § 1983 claim 14 requires two essential elements: (1) the conduct that harms the plaintiff must be committed under 15 color of state law (i.e., state action), and (2) the conduct must deprive the plaintiff of a 16 constitutional right.”). Plaintiff has not done so. However, he seems to suggest that Domus, 17 Casa, and Perez were engaged in a conspiracy with state actors to violate this constitutional 18 rights. But the complaint contains nothing more than conclusory allegations of a civil conspiracy, 19 which are insufficient to state a claim against any named defendant under 42 U.S.C. § 1983. See 20 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (emphasizing that the court is not 21 required to “accept as true a legal conclusion couched as a factual allegation”) (internal quotation 22 and citation omitted); *Simmons v. Sacramento Cty. Superior Ct.*, 318 F.3d 1156, 1161 (9th Cir. 23 2003) (holding that “conclusory allegations that the lawyer was conspiring with state officers to 24 deprive him of due process are insufficient” to state a claim); *Price v. Hawaii*, 939 F.2d 702, 708 25 (9th Cir. 1991) (requiring something more than conclusory assertions of a civil conspiracy 26 between a private party and a

state actor in order to establish § 1983 liability). 27 Moreover, plaintiff has not linked any asserted constitutional violations to the San Joaquin 28 Housing Authority. Plaintiff has identified no municipal policy or custom leading to the asserted 1 | violation of his rights. As a result, there is no properly pled Monell claim. See *Monell v. Dep't of 2 | Social Services*, 436 U.S. 585 at 691, 694 (1978). 3 Accordingly, it is hereby ORDERED that: 4 1. Plaintiffs application to proceed in forma pauperis, ECF No. 2, is GRANTED. 5 2. Plaintiffs complaint, ECF No. 1, is DISMISSED with leave to amend. 6 3. Within thirty days from service of this order, plaintiff shall file either (1) an amended 7 | complaint or (2) notice of voluntary dismissal of this action without prejudice. 8 4. Failure to timely file either an amended complaint or notice of voluntary dismissal may 9 | result in the imposition of sanctions, including a recommendation that this action be dismissed 10 || with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 11 5. The Clerk of Court shall send plaintiff a complaint form with this order. 12 3 IT IS SO ORDERED. 14 (iy - Dated: _ February 24, 2025 q——

15 JEREMY D. PETERSON

16 UNITED STATES MAGISTRATE JUDGE

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