

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

Jevarien Zymell Dunlap v. Samaritan House

Dunlap v. Samaritan House · No. 25-cv-09086-LJC · Decided January 27, 2026

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
JEVARIEN ZYMELL DUNLAP, Case No. 25-cv-09086-LJC 8 Plaintiff, ORDER GRANTING
APPLICATION TO PROCEED IN FORMA PAUPERIS 9 v. ORDER TO SHOW CAUSE WHY
10 SAMARITAN HOUSE, COMPLAINT SHOULD NOT BE DISMISSED Defendant. 11 Re:
Dkt. Nos. 1, 2 12 13 I. INTRODUCTION AND IFP APPLICATION 14 Plaintiff Jevarien Dunlap,
pro se, applies to proceed in forma pauperis (IFP).

See ECF 15 No. 2. Sufficient cause having been shown, that application is GRANTED. 16 The
Court now reviews the sufficiency of Dunlap’s Complaint against Defendant M & O 17 Mart Deli
to determine whether it should be dismissed under 28 U.S.C. § 1915(e)(2)(B).

For the 18 reasons discussed below, Dunlap is ORDERED TO SHOW CAUSE why the
Complaint should 19 not be dismissed. Dunlap must file no later than four weeks from the date of
this Order either: 20 (1) an amended complaint that cures the defects identified in this Order; or
(2) a response to this 21 Order explaining why the current Complaint is sufficient to proceed.

If Dunlap does not file either 22 an amended complaint or a response by that deadline, or fails to
cure the defects identified in this 23 Order, the case will be reassigned to a district judge with a
recommendation that it be dismissed. 24 The case management conference previously scheduled
for February 12, 2026 is 25 CONTINUED to May 14, 2026 at 1:30 PM, to occur via Zoom
webinar videoconference.

Access 26 instructions are available at <https://cand.uscourts.gov/ljc/>. Dunlap must file a case
management 27 statement no later than May 7, 2026. If Defendant has been served and appeared
by that date, 1 file a joint case management statement. 2 II. THE COMPLAINT 3 Dunlap brings
this action against Defendant Samaritan House, a shelter that Dunlap alleges 4 is located in San
Francisco, California.

Compl. (ECF No. 1) at 1–2, § I. The Court takes judicial 5 notice that the North Access Road
address Dunlap provides for Samaritan House is in fact in 6 South San Francisco, a different city,
but that distinction is of no consequence to this Order. 7 The Complaint alleges that Dunlap was
“bitten by a bug” while sleeping at Samaritan 8 House, resulting in a swollen hand, and that the
staff there negligently leave the door open for 9 extended periods of time.

Compl. at 3, 5, §§ V, VI. Dunlap asserts claims for negligence and 10 premises liability, Compl. at 5, § VI, and subject matter jurisdiction based on diversity of 11 citizenship, Compl. at 2, § II. 12
III. LEGAL STANDARD 13 When an application to proceed in forma pauperis has been granted, the Court must then 14 evaluate the sufficiency of his Complaint under 28 U.S.C. § 1915(e)(2)(B), which provides in 15 relevant part that after granting permission to proceed in forma pauperis, a court “shall dismiss the 16 case at any time if the court determines that... the action... is frivolous or malicious [or] fails to 17 state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2) (B)(i), (ii).

When a 18 complaint fails to state a claim on which relief may be granted, a court may also dismiss the case 19 sua sponte (meaning on the court’s own initiative) under Rule 12(b)(6) of the Federal Rules of 20 Civil Procedure, regardless of whether a plaintiff is proceeding in forma pauperis. *Omar v. Sea- 21 Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987).

22 When the complaint has been filed by a pro se plaintiff, a court must “construe the 23 pleadings liberally and... afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 24 F.3d 338, 342 (9th Cir. 2010) (citation omitted). But “[t]hreadbare recitals of the elements of a 25 cause of action... do not suffice,” and a court need not credit “legal conclusions” or “mere 26 conclusory statements.” See *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

In order to state a 27 claim on which relief may be granted, the factual allegations in the complaint “must be enough to 1 (2007). A complaint must demonstrate “facial plausibility” by pleading “factual content that 2 allows the court to draw the reasonable inference that the defendant is liable for the misconduct 3 alleged.” *Iqbal*, 556 U.S. at 678.

In other words, the Complaint needs to include facts, not just the 4 type of legal claim the plaintiff asserts. In assessing whether a complaint is “frivolous” under 5 § 1915, the Court may also consider whether “the facts alleged are clearly baseless, a category 6 encompassing allegations that are fanciful, fantastic, and delusional.” *Denton v. Hernandez*, 504 7 U.S. 25, 32–33 (1992).

8 Furthermore, federal courts are courts of limited subject matter jurisdiction, and a plaintiff 9 must provide a sufficient explanation of why this case falls within that jurisdiction. Two of the 10 most common grounds for federal subject matter jurisdiction are federal question jurisdiction 11 under 28 U.S.C. § 1331, which applies to claims “arising under the Constitution, laws, or treaties 12 of the United States,” and diversity jurisdiction under 28 U.S.C. § 1332(a), which applies to cases 13 where no defendant is a citizen of the same state as any plaintiff and where the amount in 14 controversy exceeds \$75,000.

Federal courts “have an independent obligation to determine 15 whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.” 16 *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). 17 Courts ordinarily must give pro se plaintiffs leave to “amend their

complaint unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.” 19 *Franklin v. Murphy*, 745 F.2d 1221, 1235 n.9 (9th Cir.

1984). 20 IV. ANALYSIS 21 As noted above, Dunlap asserts that this federal district court has subject matter 22 jurisdiction based on diversity of citizenship. Compl. at 2, § II. Diversity jurisdiction under 28 23 U.S.C. § 1332(a) applies to cases between “citizens of different states”¹ where “the matter in 24 controversy exceeds the sum or value of \$75,000.” 28 U.S.C. § 1332(a).

That statute “applies 25 only to cases in which the citizenship of each plaintiff is diverse from the citizenship of each 26 defendant.” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). 27 1 For the purpose of diversity jurisdiction, an individual person who is a citizen of the 2 United States is considered a citizen of the state where they are “domiciled,” which means the 3 state where that person “resides with the intention to remain or to which she intends to return.” 4 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir.

2001). Dunlap’s complaint does not 5 address domicile specifically, but it indicates that Dunlap resides in Oakland, California. Compl. 6 at 1. There is no indication that Dunlap is a citizen of any state other than California. 7 There are various rules for determining the state or states where different types of legal 8 entities are citizens. See *Johnson v. Columbia Props.*

Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 9 2006) (discussing corporations, limited liability companies, limited partnerships, and trusts). 10 Dunlap has not addressed how Samaritan House is organized as a legal entity, so the Court cannot 11 say with any confidence where Samaritan House is a citizen for the purpose of diversity 12 jurisdiction. But the Complaint alleges that Samaritan House is located in California, and there is 13 no indication that it has ties to any other state.

14 “The party seeking to invoke the court’s jurisdiction bears the burden of establishing that 15 jurisdiction exists.” *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). Dunlap has not met that 16 burden to show that Dunlap and Samaritan House are citizens of different states, as is necessary 17 for diversity jurisdiction under § 1332(a). It is also not clear that Dunlap has plausibly alleged that 18 the amount in controversy exceeds \$75,000, when Dunlap’s “monetary Demand of 122,630” 19 (presumably dollars) for a bug bite is unsupported by factual allegations regarding Dunlap’s 20 damages or the amount that Dunlap could recover.

See Compl. at 7. Nor is any other basis for 21 jurisdiction apparent. Dunlap has not established federal question jurisdiction under 28 U.S.C. 22 § 1331, for example, because Dunlap does not identify any claim as arising under federal law. 23 Accordingly, Dunlap is ORDERED TO SHOW CAUSE why this case should not be dismissed for 24 lack of subject matter jurisdiction.

25 V. CONCLUSION 26 For the reasons discussed above, Dunlap is ORDERED TO SHOW CAUSE why this case 27 should not be dismissed for lack of subject matter jurisdiction. Dunlap

must file no later than four] identified in this Order; or (2) a response to this Order explaining why the current Complaint is 2 || sufficient to proceed. 3 If Dunlap files an amended complaint, it must list the same case number as this Order (25- 4 || cv-09086) and must include all of the claims Dunlap wishes to assert and all of the defendants 5 || Dunlap wishes to sue.

An amended complaint completely replaces an original complaint and 6 || cannot rely on the contents of the original complaint. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 7 { (9th Cir. 1992). 8 If Dunlap does not respond to this Order as required above, this case may be dismissed for 9 || failure to prosecute and failure to comply with a court order, in addition to the other grounds for 10 || dismissal identified in this Order.

11 If Dunlap continues to proceed without an attorney, the Court encourages Dunlap to 12 || review the section “Representing Yourself” on the Court’s website, located at 13 <https://www.cand.uscourts.gov/pro-se-litigants/>. Dunlap is also encouraged to contact the Court’s 14 || Legal Help Centers. Attorneys at the Legal Help Centers can provide basic assistance and advice 15 || to parties representing themselves but cannot provide legal representation.

Dunlap may schedule a 16 || an appointment by calling 415-782-8982 or emailing fedpro@sfbar.org. 17 IT IS SO ORDERED. Zz 18 || Dated: January 27, 2026 19 20 Ze, Mri — ‘A J. CISNEROS 21 ited States Magistrate Judge 22 23 24 25 26 27 28