

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

Hoke v. Nunez

Case No. 2:25-cv-0275-JDP (P) (E.D. Cal. Apr. 15, 2025) · No. 2:25-cv-0275-JDP (P) · Decided April 16, 2025

OPINION

(PC) Hoke v. Nunez

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 MICHAEL LAURENCE HOKE, Case No. 2:25-cv-0275-JDP (P) 12 Plaintiff, ORDER 13
v. 14 M. NUNEZ, et al., 15 Defendants. 16 17 18 Plaintiff, a state prisoner proceeding pro se,
brings this § 1983 action against M. Nunez, a 19 counselor at plaintiff’s facility, and C. Cser, a
correctional officer, alleging that defendants 20 misclassified plaintiff upon his arrival. ECF No. 1.
The allegations fail to state a claim. Plaintiff 21 may, if he chooses, file an amended complaint
that addresses the deficiencies noted herein. I will 22 grant plaintiff’s application to proceed in
forma pauperis. ECF No. 2. 23 Screening and Pleading Requirements 24 A federal court must
screen the complaint of any claimant seeking permission to proceed 25 in forma pauperis. See 28
U.S.C. § 1915(e). The court must identify any cognizable claims and 26 dismiss any portion of the
complaint that is frivolous or malicious, fails to state a claim upon 27 which relief may be granted,
or seeks monetary relief from a defendant who is immune from such 28 relief. *Id.* 1 A complaint
must contain a short and plain statement that plaintiff is entitled to relief, 2 Fed. R. Civ. P. 8(a)(2),
and provide “enough facts to state a claim to relief that is plausible on its 3 face,” *Bell Atl. Corp.*
v. Twombly, 550 U.S. 544, 570 (2007). The plausibility standard does not 4 require detailed
allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S. 5 662, 678
(2009). If the allegations “do not permit the court to infer more than the mere 6 possibility of
misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not 7 identify “a
precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 8 1038 (9th Cir.
2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that 9 give rise to an
enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 10 n.2 (9th Cir.
2006) (en banc) (citations omitted). 11 The court must construe a pro se litigant’s complaint
liberally. See *Haines v. Kerner*, 404 12 U.S. 519, 520 (1972) (per curiam). The court may dismiss
a pro se litigant’s complaint “if it 13 appears beyond doubt that the plaintiff can prove no set of
facts in support of his claim which 14 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849
F.3d 1204, 1208 (9th Cir. 2017). 15 However, ““a liberal interpretation of a civil rights complaint

may not supply essential elements 16 of the claim that were not initially pled.’” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 17 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 18 Analysis 19 Plaintiff alleges that Nunez, Cser, and others on plaintiff’s classification team violated his 20 due process rights when they misclassified him upon his arrival at California Medical Facility. 21 ECF No. 1 at 3. He asserts that Nunez used incorrect information to classify him as an “‘R’ 22 suffix sex offender.” *Id.* He also alleges that Nunez gave him incorrect information to persuade 23 him against filing a grievance. *Id.* He alleges that Nunez told him that it would be pointless to 24 file a grievance because plaintiff’s classification hinged on records provided to Nunez and not 25 Nunez’s own opinions. *Id.* He acknowledges that he pled guilty to crimes against his ex-wife, 26 but he asserts that he should not be classified as a sex offender. *Id.* at 4. He appears to bring this 27 claim under the Fourteenth Amendment to the federal constitution, and defamation of character 28 and due process under state law. *Id.* at 3. 1 Plaintiff fails to state a claim. First, plaintiff fails to adequately allege a Fourteenth 2 Amendment claim based on his misclassification. To bring a Fourteenth Amendment due process 3 claim, a plaintiff must allege that (1) he had a life, liberty, or property interest that the state 4 deprived him of and (2) the procedures related on that deprivation were constitutionally 5 insufficient. *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). Plaintiff neither alleges 6 that any constitutionally protected interest was impacted by his misclassification nor does he 7 explain how the process of his misclassification was constitutionally insufficient. See ECF No. 1 8 at 3. As such, plaintiff fails to allege a Fourteenth Amendment due process claim. See *Barno v. 9 Ryan*, No. 07-CV-1373 JM (WMC), 2008 WL 4951593, at *2-3 (S.D. Cal. Nov. 17, 2008) 10 (dismissing plaintiff’s due process claim with leave to amend because he failed to allege what 11 constitutionally protected interest was impacted by his initial misclassification as a sex offender). 12 Necessarily, plaintiff also fails to adequately allege a due process violation under California state 13 law. See *Walls v. Cent. Contra Costa Transit Auth.*, 653 F.3d 963, 967-68 (9th Cir. 2011) 14 (analyzing a federal due process and California due process claim together because they involve 15 the same elements—whether the plaintiff had a protected interest and whether plaintiff received 16 the process he was due). 17 Plaintiff also fails to adequately allege a state law defamation claim. A California 18 defamation claim has the following elements: (1) publication (2) of false information (3) that is 19 defamatory and (4) unprivileged, which (5) has the natural tendency to injure or cause special 20 damage. *Bowles v. Constellation Brands, Inc.*, 444 F. Supp. 3d 1161, 1172 (E.D. Cal. 2020) 21 (citing *Redfearn v. Trader Joe’s Co.*, 230 Cal. Rptr. 3d 98, 112 (Cal. Ct. App. 2018), disapproved 22 of on other grounds by *Ixchel Pharma, LLC v. Biogen, Inc.*, 266 Cal. Rptr. 3d 665 (Cal. 2020)). 23 Publication is a necessary element of a defamation claim. *Id.* Here, plaintiff’s allegation is 24 simply that he was misclassified as a sex offender based on incorrect information. See ECF No. 1 25 at 3. He neither alleges that this misclassification was published anywhere, nor that anyone other 26 than those who misclassified him knew of this allegedly false information. As such, plaintiff’s 27 defamation claim fails. 28 1 Finally, to the

extent plaintiff can be deemed to be bringing an Eighth Amendment claim 2 based on his misclassification, misclassification alone is not condemned by the Eighth 3 Amendment. See *Myron v. Terhune*, 476 F.3d 716, 719 (9th Cir. 2007) (“Because the mere act of 4 classification ‘does not amount to an infliction of pain,’ it ‘is not condemned by the Eighth 5 Amendment.’” (citation omitted)); see also *Clark v. Moreno*, No. 5:21-cv-00790-MCS-PD, 2023 6 WL 6520540, at *5 (C.D. Cal. Aug. 29, 2023) (“Neither misclassification of an inmate nor 7 confinement of an inmate in administrative segregation due to misclassification satisfies this 8 [Eighth Amendment “sufficiently serious”] standard.”). 9 Accordingly, plaintiff’s complaint is dismissed for failure to state a claim. I will allow 10 plaintiff a chance to amend his complaint before recommending that this action be dismissed. 11 Plaintiff should also take care to add specific factual allegations against each defendant. If 12 plaintiff decides to file an amended complaint, the amended complaint will supersede the current 13 one. See *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means 14 that the amended complaint will need to be complete on its face without reference to the prior 15 pleading. See E.D. Cal. Local Rule 220. Once an amended complaint is filed, the current one no 16 longer serves any function. Therefore, in an amended complaint, as in the original, plaintiff will 17 need to assert each claim and allege each defendant’s involvement in sufficient detail. The 18 amended complaint should be titled “First Amended Complaint” and refer to the appropriate case 19 number. If plaintiff does not file an amended complaint, I will recommend that this action be 20 dismissed. 21 Accordingly, it is hereby ORDERED that: 22 1. Plaintiff’s request for leave to proceed in forma pauperis, ECF No. 2, is GRANTED. 23 2. Plaintiff’s complaint, ECF No. 1, is DISMISSED with leave to amend. 24 3. Within thirty days from service of this order, plaintiff shall file either (1) an amended 25 complaint or (2) notice of voluntary dismissal of this action without prejudice. 26 4. Failure to timely file either an amended complaint or notice of voluntary dismissal may 27 result in the imposition of sanctions, including a recommendation that this action be dismissed 28 with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 1 5. The Clerk of Court shall send plaintiff a complaint form with this order. 2 3 IT IS SO ORDERED. 4 (_ Dated: _ April 15, 2025 q——

5 JEREMY D. PETERSON

6 UNITED STATES MAGISTRATE JUDGE

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