

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

Mahan v. Katz

No. 2:25-cv-3407 AC P (E.D. Cal. Dec. 2, 2025) · No. No. 2:25-cv-3407 AC P · Decided December 2, 2025

OPINION

Katz

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 COLBRIN K. MAHAN, No. 2:25-cv-3407 AC P

12 Plaintiff,

13 v. ORDER AND FINDINGS AND

RECOMMENDATIONS

14 JOSEPH A. KATZ,

15 Defendant. 16

17 Plaintiff is a county inmate who filed this civil rights action pursuant to 42 U.S.C. § 1983 18
without a lawyer. 19 I. Application to Proceed In Forma Pauperis 20 Plaintiff has filed an
incomplete motion for leave to proceed in forma pauperis. ECF No. 21 2. However, rather than
require plaintiff to submit a complete application, the court will instead 22 recommend denial of
the motion and dismissal of the complaint without leave to amend for 23 failure to state a claim.
See *Tripati v. First Nat’l Bank & Tr.*, 821 F.2d 1368, 1370 (9th Cir. 1987) 24 (“A district court
may deny leave to proceed in forma pauperis at the outset if it appears from the 25 face of the
proposed complaint that the action is frivolous or without merit.”). 26 II. Statutory Screening of
Prisoner Complaints 27 The court is required to screen complaints brought by prisoners seeking
relief against “a 28 governmental entity or officer or employee of a governmental entity.” 28
U.S.C. § 1915A(a). A 1 claim “is [legally] frivolous where it lacks an arguable basis either in law
or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The court may dismiss a claim as
frivolous if it is based on 3 an indisputably meritless legal theory or factual contentions that are
baseless. *Id.* at 327. The 4 critical inquiry is whether a constitutional claim, however inartfully
pleaded, has an arguable 5 legal and factual basis. *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir.
1989), superseded by 6 statute on other grounds as stated in *Lopez v. Smith*, 203 F.3d 1122, 1130
(9th Cir. 2000). 7 In order to avoid dismissal for failure to state a claim a complaint must contain
more than 8 “naked assertion[s],” “labels and conclusions,” or “a formulaic recitation of the

elements of a 9 cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007). In other words, 10 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 11 statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim upon which the 12 court can grant relief has facial plausibility. *Twombly*, 550 U.S. at 570. “A claim has facial 13 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable 14 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation 15 omitted). When considering whether a complaint states a claim, the court must accept the 16 allegations as true, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), and construe the 17 complaint in the light most favorable to the plaintiff, *Jenkins v. McKeithen*, 395 U.S. 411, 421 18 (1969) (citations omitted). 19 III. Complaint 20 The complaint alleges that defendant, a deputy public defender,¹ provided ineffective 21 assistance of counsel in his representation of plaintiff. ECF No. 1. Plaintiff seeks compensatory 22 damages for the violation of his rights and appears to seek to have defendant pay the costs of his 23 defense in his criminal case. *Id.* at 3. 24 //// 25 1 In the “Defendants” section of the complaint plaintiff lists Jonathan Miller, an employee of the 26 San Joaquin County Jail, as a defendant. ECF No. 1 at 2. However, it appears that plaintiff mistakenly believed that this section was a continuation of the “Previous Lawsuits” section in 27 which he identified a separate case that is proceeding in this court against Jonathan Miller. See *id.* at 1-2; see also *Mahan v. Miller*, No. 2:25-cv-3112 EFB (E.D. Cal.). All allegations in the 28 complaint refer to the alleged failures of his public defender. ECF No. 1 at 1, 3. 1 IV. Failure to State a Claim 2 “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by 3 the Constitution and laws of the United States, and must show that the alleged deprivation was 4 committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988) 5 (citations omitted). “[A] public defender does not act under color of state law when performing a 6 lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.” *Polk County v. 7 Dodson*, 454 U.S. 312, 325 (1981). In determining whether a public defender was performing a 8 lawyer’s traditional functions, the court looks at whether counsel was “acting under the ethical 9 standards of a lawyer-client relationship” and whether they would be held to the same duties and 10 obligations if privately retained. *Miranda v. Clark County*, 319 F.3d 465, 468 (9th Cir. 2003). 11 In this case, plaintiff identifies Katz as a public defender and the claims against him are 12 that he was deficient in carrying out his duties as appointed counsel. ECF No. 1 at 1, 3. Because 13 plaintiff’s allegations are about Katz’ actions in representing plaintiff in a criminal case, Katz was 14 not acting under color of state law. This means that plaintiff cannot bring a claim against 15 defendant Katz under § 1983. Furthermore, any potential claims for legal malpractice do not 16 come within the jurisdiction of the federal courts. *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th 17 Cir. 1981). For these reasons, the claims against defendant Katz, which are the only claims 18 presented in the complaint, should be dismissed without leave to amend. 19 V. No Leave to Amend 20 Leave to amend should be granted if it appears possible that the defects in the

complaint 21 could be corrected, especially if a plaintiff is pro se. *Lopez v. Smith*, 203 F.3d 1122, 1130-31 22 (9th Cir. 2000) (en banc). However, if, after careful consideration, it is clear that a complaint 23 cannot be cured by amendment, the court may dismiss without leave to amend. *Cato v. United 24 States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995). 25 The undersigned finds that, as set forth above, the complaint fails to state a claim upon 26 which relief may be granted and that given the nature of the claims, amendment would be futile. 27 The complaint should therefore be dismissed without leave to amend. 28 //// 1 VI. Plain Language Summary of this Order for a Pro Se Litigant 2 It is being recommended that your motion for leave to proceed in forma pauperis be 3 || denied and your complaint be dismissed without leave to amend because your allegations do not 4 || state any claims for relief and it does not appear the problems can be fixed. 5 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court 6 || shall randomly assign a United States District Judge to this action. 7 IT IS FURTHER RECOMMENDED that: 8 1. Plaintiffs request for leave to proceed in forma pauperis (ECF No. 2) be DENIED. 9 2. The complaint be DISMISSED without leave to amend for failure to state a claim. 10 These findings and recommendations are submitted to the United States District Judge 11 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days 12 | after being served with these findings and recommendations, plaintiff may file written objections 13 || with the court. Such a document should be captioned “Objections to Magistrate Judges Findings 14 | and Recommendations.” Plaintiff is advised that failure to file objections within the specified 15 || time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 16 | (9th Cir. 1991). 17 | DATED: December 2, 2025 TM 18 _Athuer—Clore ALLISON CLAIRE 19 UNITED STATES MAGISTRATE JUDGE 20 21 22 23 24 25 26 27 28