

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Smith v. Akkinola, et al.

Smith · No. 1:25-cv-00418-KES-HBK · Decided April 22, 2025

OPINION

Smith v. Akkinola

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 CANDACE SMITH, Case No. 1:25-cv-00418-KES-HBK 12 Plaintiff, SCREENING
ORDER

13 v. MAY 23, 2025 DEADLINE

14 MERCY AYODELE AKKINOLA, et al. 15 Defendants. 16 17 Plaintiff Candace Smith
("Plaintiff"), who is proceeding pro se, initiated this civil action 18 on April 10, 2025, by filing a
form "Complaint for Civil Case." (Doc. No. 1, "Complaint"). The 19 Court granted Plaintiff's
application to proceed in forma pauperis. (Doc. No. 3). Plaintiff's 20 Complaint is currently
before the Court for screening pursuant to 28 U.S.C. § 1915(e)(2)(B). 21 Upon review, the Court
finds the Complaint does not set forth any basis for federal subject matter 22 jurisdiction and fails
to state a cognizable claim for relief. The Court will afford Plaintiff an 23 opportunity to file an
amended complaint before recommending this case be dismissed for lack of 24 subject matter
jurisdiction.

25 SCREENING REQUIREMENT AND STANDARD

26 Because Plaintiff is proceeding in forma pauperis, the Court may dismiss a case "at any 27
time" if the Court determines, inter alia, the action is frivolous or malicious, fails to state claim 28
on which relief can be granted, or seeks monetary relief against a defendant who is immune from
1 such relief. 28 U.S.C § 1915(e)(2)(B)(ii)-(iii); see also *Lopez v. Smith*, 203 F. 3d 1122, 1129
(9th

2 Cir. 2000) (section 1915(e) applies to all litigants proceeding in form pauperis). A complaint,
3 however, should not be dismissed unless it appears beyond doubt that the plaintiff can prove no
4 set of facts in support of his or her claim that would entitle him to relief. *Johnson v. Knowles*, 5
113 F.3d 1114, 1117 (9th Cir.), cert. denied, 552 U.S. 996 (1997). A complaint must include a 6
short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. 7
P. 8(a). Dismissal for failure to state a claim in this context is governed by the same standard as 8
dismissal under Federal Rule of Civil Procedure 12(b)(6). *Barren v. Harrington*, 152 F. 3d 1193, 9

1194 (9th Cir. 1998). As such, a complaint must contain sufficient factual matter to state a claim
10 to relief that is “plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A
complaint 11 is plausible on its face when it contains sufficient facts to support a reasonable
inference that the 12 defendant is liable for the misconduct alleged.” *Id.* At this stage, the court
accepts the facts 13 stated in the complaint as true. *Hosp. Bldg. Co. v. Rex Hosp. Tr.*, 425 U.S.
738, 740 (1976). The 14 Court does not accept as true allegations that are merely conclusory,
unreasonable inferences, or 15 unwarranted deductions. *Western Mining Council v. Watt*, 643 F.2d
618, 624 (9th Cir. 1981). 16 Nor are legal conclusions considered facts. *Iqbal*, 556 U.S. at 678. 17
Due to Plaintiff’s pro se status, the Court must liberally construe the Complaint in the 18 light
most favorable to the Plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Bernhardt 19 v.*
L.A. County, 339 F.3d 920, 925 (9th Cir. 2003). If a pleading could be cured by the allegation 20
of other facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal
21 of the action. See *Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v.*
22 *Department of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). However, it is not the role of the Court
to 23 advise a litigant on how to cure the defects. Such advice “would undermine district judges’
role 24 as impartial decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); see also *Lopez*,
203 F.3d 25 at 1131 n.13.

26 SUMMARY OF OPERATIVE COMPLAINT

27 Plaintiff names the following nine defendants in her Complaint: (1) Mercy Ayodele 28
Akkinola; (2) Midland Financial; (3) Triple A Insurance; (4) Long John Silver Inc.; (5) Taco Bell;
1 (6) Department of Motor Vehicles; (7) City of Fresno; (8) City of Clovis; and (9) Dannette
Nova. 2 (Doc. No. 1 at 1). Under the “Basis of Jurisdiction” section of the Complaint, Plaintiff
checks 3 “Federal Question.” (*Id.* at 3). Under the section of the form where Plaintiff is directed to
4 provide “specific federal statutes, federal treaties, and/or provisions of the United States 5
Constitution” as the basis of Federal Question Jurisdiction, she states “Fraud, Theft, Attempted 6
Murder[, and] Car Crash Setup.” (*Id.* at 4). Despite checking “Federal Question” as the basis of 7
jurisdiction, she also partially filed out portions of the form pertaining to diversity of citizenship 8
jurisdiction. (See *id.* at 4-5). However, Plaintiff only lists herself and some of the named 9
defendants without providing any additional information, such as Defendants’ addresses or places
10 of incorporation. (*Id.*). Plaintiff states that the amount in controversy is \$5,000,000. (*Id.* at 5).
11 Due to its brevity, the Court cites in full Plaintiff’s statement of claim: 12 It’s believed that
Mercy is partnership w/ Midland & together stole car. Upon such created crime scene for benefit
of putting my car in 13 a movie marvel Mercy paid Dannette Nova to crash car w/o unknown
name of officer, hid in hotel & tried to steal crash vehicle by putting 14 drugs in my foods & oil in
gas tank to cause car not move. Ongoing greed attacks, robbery & setups. DMV hid data on
vehicle & lied 15 about whose cars. 16 (*Id.* at 5, unedited).

17 DISCUSSION

18 A. Subject Matter Jurisdiction 19 “Federal courts are courts of limited jurisdiction.” *Kokkonen*

v. Guardian Life Ins. Co. of 20 Am., 511 U.S. 375, 377 (1994). “[S]ubject matter jurisdiction of the district court is not a 21 waivable matter and may be raised at any time by one of the parties, by motion or in the 22 responsive pleadings, or sua sponte by the trial or reviewing court.” Emrich v. Touche Ross & 23 Co., 846 F.2d 1190, 1194 n.2 (9th Cir. 1988). A federal court is presumed to lack subject matter 24 jurisdiction, and a plaintiff bears the burden of establishing that subject matter jurisdiction is 25 proper. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). The “presence or 26 absence of federal question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which 27 provides that federal jurisdiction exists only when a federal question is presented on the face of 28 the plaintiff’s properly pleaded complaint.” Caterpillar, Inc. v. Williams, 482 U.S. 386 (1987). If 1 a federal court lacks subject matter jurisdiction, the action must be dismissed. Fed. R. Civ. P. 2 12(h)(3). 3 A federal question is presented in an action when the claim “aris[es] under the 4 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. The presence or absence 5 of federal-question jurisdiction is governed by the “well-pleaded complaint rule,” which provides 6 that federal jurisdiction exists only when a federal question is presented on the face of the 7 plaintiff’s properly pleaded complaint. See Gully v. First National Bank, 299 U.S. 109, 112–113 8 (1936). 9 Liberally construed, the Complaint suggests that Smith may have been the victim of some 10 crime. No matter how liberally construed, the Court cannot independently discern from the face 11 of the Complaint what federal question is presented. Plaintiff’s rambling allegations do not 12 adequately allege the involvement of any state actor or otherwise implicate the United States 13 Constitution or any federal statutes. (Id. at 5). To the extent that Smith seeks to bring a claim for 14 tort or fraud under state law, she must pursue that claim in state court. 28 U.S.C. § 1367(c)(3). 15 Turning to diversity of citizenship jurisdiction, 1 jurisdiction founded on 28 U.S.C. § 1332 16 requires the parties be in complete diversity and the amount in controversy exceed \$75,000. To 17 establish citizenship for diversity purposes, a natural person must be a citizen of the United States 18 and be domiciled in a particular state. Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 19 (9th Cir. 1983). A person is considered domiciled in the place they reside if they intent to remain 20 there or intend to return there. Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). 21 A corporation is a citizen of any state where it is incorporated and of the state where it has its 22 principal place of business. 28 U.S.C. § 1332(c); see also Indus. Tectonics, Inc. v. Aero Alloy, 23 912 F.2d 1090, 1092 (9th Cir. 1990). 24 Here the Complaint does not provide the citizenship of any of the parties, including 25 Plaintiff. Thus, the Complaint facially fails to meet the requirement to establish diversity 26 jurisdiction under §1332. 27 1 The Complaint does not assert jurisdiction based on diversity of citizenship, (see generally Doc. No. 1), 28 but the Court evaluates the Complaint on this basis considering Plaintiff’s pro se status. 1 Because the Complaint fails to establish any basis for federal subject matter jurisdiction, 2 the Court lacks authority to adjudicate Plaintiff’s claims but will afford Plaintiff an opportunity to 3 file an amended complaint if she can cure this defect. In addition to failing to provide a basis for 4 subject matter jurisdiction, Plaintiff’s Complaint does

not provide a plain statement of her claims, 5 fails to allege a causal connection between any defendant and any act of wrongdoing, and (other 6 than the City of Fresno, City of Clovis and Department of Motor Vehicles) fails to identify any 7 defendant who may be deemed a state actor. In preparing an amended complaint, the Court 8 advises Plaintiff of some basis procedural and legal tenets. 9 B. Federal Rule of Civil Procedure 8 10 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and 11 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). 12 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause 13 of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 14 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a 15 claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. 16 at 570, 127 S.Ct. at 1974). While factual allegations are accepted as true, legal conclusions are 17 not. *Id.*; see also *Twombly*, 550 U.S. at 556–557. 18 C. State Actor

19 Section 1983 allows a private citizen to sue for the deprivation of a right secured by 20 federal law. See 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). “To 21 establish § 1983 liability, a plaintiff must show both (1) deprivation of a right secured by the 22 Constitution and laws of the United States, and (2) that the deprivation was committed by a 23 person acting under color of state law.” *Chudacoff v. Univ. Med. Ctr. of S. Nev.*, 649 F.3d 1143, 24 1149 (9th Cir. 2011) (citing *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003)); *Soo Park v. 25 Thompson*, 851 F.3d 910, 921 (9th Cir. 2017). An individual defendant is not liable on civil 26 rights claim unless the facts establish either the defendant’s personal involvement in the 27 constitutional deprivation or a causal connection between the defendant’s wrongful conduct and 28 the alleged constitutional deprivation. See *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); 1 *Johnson v. Duffy*, 588 F.2d 740, 743–44 (9th Cir. 1978). 2 City or county governments, including departments within them such as the Sheriff’s 3 Department, cannot be held liable under section 1983 for the acts of an employee. *Monell v. 4 Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691 (1978). To state a section 1983 claim 5 against the City or County as a whole, plaintiff would have to allege that a department policy or 6 custom caused his injuries. *Hyun Ju Park v. City & Cty. of Honolulu*, 952 F.3d 1136, 1141 (9th 7 Cir. 2020).

8 Further, to the extent Plaintiff seeks monetary damages against the State of California or 9 its agencies, or any of the defendants in their official capacity, such claims are barred by the 10 Eleventh Amendment. U.S. Const., Amend. XI; *Alabama v. Pugh*, 438 U.S. 781, 782 (1978); 11 *Penhurst State School & Hospital v. Halderman*, 465 U.S. 89, 100 (1984); *Kentucky v. Graham*, 12 473 U.S. 159, 169 (1985). The Eleventh Amendment does not, however, bar suits against state 13 officials in their individual capacities, or for declaratory or injunctive relief in their official 14 capacities. *Monell*, 436 U.S. at 690 n. 54.

15 CONCLUSION AND OPTIONS

16 Plaintiff's Complaint fails to establish federal subject matter jurisdiction, fails to comply 17 with Federal Rule of Civil Procedure 8, and fails to state a cognizable claim upon which relief 18 may be granted. To continue the prosecution of this action, Plaintiff must take one of the 19 following three options no later than May 23, 2025. 20 First Option: Because the Court cannot determine that the filing of an amended 21 complaint cannot cure the deficiencies identified above, the Court will afford Plaintiff an 22 opportunity to file an amended complaint if she chooses. Fed. R. Civ. P. 15(a)(2); Lopez v. Smith, 23 203 F.3d 1122, 1126-30 (9th Cir. 2000). An amended complaint supersedes (replaces) the 24 original complaint and, thus, the amended complaint must be free-standing and complete. Lacey 25 v. Maricopa County, 693 F.3d. 896, 907 n.1 (9th Cir. 2012) (en banc); E.D. Cal. Local Rule 220. 26 Each claim and the involvement of each defendant must be sufficiently alleged. The amended 27 complaint should title "First Amended Complaint," include the above case number, and be an 28 original signed and dated under penalty of perjury. Plaintiff may not change the nature of this 1 | suit or adding unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 2 | (7th Cir. 2007) (no "buckshot" complaints). 3 Second Option: Plaintiff may file a Notice stating she intends to stand on her current 4 | Complaint subject to the undersigned recommending the district court dismiss the Complaint for 5 | the reasons stated in this Order. 6 Third Option: Because no defendant has yet been served, Plaintiff may file a Notice of 7 | Voluntarily Dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(1). The 8 | Court will then dismiss this case without prejudice as a matter of law. 9 Alternatively, if Plaintiff fails to timely respond to this Court Order, i.e., fails to perform 10 | any of the three options, the undersigned will instead recommend that the district court dismiss 11 | this case as a sanction for Plaintiff's failure to comply with a court order under Local Rule 110 12 || and/or for failing to prosecute this action under Federal Rule of Civil Procedure 41(b). 13 Accordingly, it is ORDERED: 14 1. No later than May 23, 2025, Plaintiff shall take one of the following actions: (a) 15 | file a First Amended Complaint; (b); file a Notice that she intends to stand on the Complaint as 16 | screened subject to the undersigned recommending the district court dismiss the Complaint for 17 | the reasons stated in this Order; (c) file a Notice to voluntarily dismiss this action without 18 || prejudice under Fed. R. Civ. P. 41. 19 2. If Plaintiff fails to timely comply with this Court Order or seek an extension 20 | of time to comply, the Court will recommend the district court dismiss this action for 21 | Plaintiff's failure to comply with this Court Order and prosecute this action. 22 3. The Clerk of Court shall include a blank non-prisoner civil rights complaint form 23 | for Plaintiffs use as appropriate. Dated:

__April 22, 2025 Mile. Wh fareh fackte

25 HELENA M. BARCH-KUCHTA

UNITED STATES MAGISTRATE JUDGE

27 28

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/united-states-district-court-for-the-eastern-district-of-california-united-states-district-court-for/2025/smith-v-akkinola-et-al-a8i0owyo>