

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Ussery v. Domeyer

Ussery · No. 2:25-cv-00594-DC-CSK · Decided June 10, 2025

SUMMARY

The court recommends denying Kimberly Ussery’s application to proceed in forma pauperis and dismissing her complaint without leave to amend. The recommendations conclude that the foreclosure-related action is duplicative of an earlier pending action involving the same property and defendant, and direct that the case be closed.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 10, 2025
DOCKET	2:25-cv-00594-DC-CSK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se, filed an action challenging a nonjudicial foreclosure and moved to proceed in forma pauperis. The magistrate judge issued findings and recommendations recommending denial of in forma pauperis status and dismissal of the complaint without leave to amend because the action was duplicative of an earlier pending action.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915(e)(2)(B), an in forma pauperis action must be dismissed if it is frivolous or malicious, fails to state a claim, or seeks monetary relief from an immune defendant. The court accepts factual allegations as true unless clearly baseless or fanciful, construes them in the plaintiff’s favor, and liberally construes pro se pleadings, but need not accept conclusory allegations, unreasonable inferences, or unwarranted factual deductions. Duplicative-suit analysis examines whether the causes of action, relief sought, and parties or privies are the same, using the transaction test.
PRECEDENTIAL VALUE	nonprecedential

PARTIES

Kimberly Ussery v. Mark Domeyer, NewRez LLC d/b/a ShellPoint
Mortgage Servicing, Peak Foreclosure, Caliber Home Loans

TOPICS

civil procedure foreclosure wrongful foreclosure fair debt collection res judicata

PRACTICE AREAS

civil procedure foreclosure consumer protection remedies

QUESTIONS PRESENTED

1. Whether the court should deny Plaintiff's application to proceed in forma pauperis because the complaint was facially frivolous and without merit.
2. Whether the complaint was subject to dismissal under 28 U.S.C. § 1915(e)(2)(B).
3. Whether the action was duplicative of Plaintiff's earlier pending action involving the same defendant, property, foreclosure proceedings, rights, evidence, and requested relief.
4. Whether Plaintiff should be granted leave to amend.

HOLDINGS

1. A district court may deny leave to proceed in forma pauperis at the outset when the face of the proposed complaint shows that the action is frivolous or without merit.
2. An in forma pauperis action must be dismissed if it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from an immune defendant.
3. A district court may dismiss a duplicative action when the causes of action, relief sought, and parties or privies are the same; under the transaction test, the court considers whether the actions involve the same rights, evidence, infringement, and transactional nucleus of facts.
4. Leave to amend may be denied when amendment would be futile; a plaintiff seeking to pursue overlapping claims should amend the earlier pending action rather than initiate a duplicative action.

KEY QUOTATIONS

"One need not be absolutely destitute to obtain benefits of the in forma pauperis statute." (at 1)

"A claim is legally frivolous when it lacks an arguable basis either in law or in fact." (at 2)

"To state a claim on which relief may be granted, the plaintiff must allege enough facts "to state a claim to relief that is plausible on its face."" (at 2)

"To determine whether the causes of action are the same, courts utilize the "transaction test" which requires the application of four factors, the last of which is the most important:" (at 3)

"This action is therefore duplicative of Ussery I, an ongoing earlier case in this district, and should be dismissed without leave to amend." (at 4)

FACTUAL BACKGROUND

Ussery challenged the alleged unlawful nonjudicial foreclosure of real property located at 1405 East Roosevelt Street in Stockton, California. She alleged that the defendants lacked authority to foreclose because they were not holders in due course, did not possess the original promissory note, and lacked standing. She asserted wrongful foreclosure, constitutional, RICO, tax, FDCPA, and RESPA theories and sought to void the foreclosure, restore title, obtain disgorgement, obtain a forensic audit, and recover damages. The court found that the action substantially overlapped with Ussery's earlier pending action concerning the same property and foreclosure proceedings.

PROCEDURAL HISTORY

Ussery filed this action on February 20, 2025, together with an application to proceed in forma pauperis. The magistrate judge determined that the financial showing otherwise satisfied 28 U.S.C. § 1915(a), but recommended denial of IFP status because the complaint was facially frivolous and duplicative. The court also recommended dismissal under the screening requirements of 28 U.S.C. § 1915(e)(2)(B), without leave to amend, and closure of the case. The findings and recommendations were referred to the assigned district judge under 28 U.S.C. § 636(b)(1), subject to objections.

DISPOSITION

other

REMAND INSTRUCTIONS

The magistrate judge recommended that the IFP motion be denied, the complaint be dismissed without leave to amend, and the Clerk be directed to close the case. If Plaintiff seeks to file an amended complaint, the recommendation states that she should do so in Ussery I, case number 2:24-cv-03699-DJC-CKD.

CASES CITED

- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir. 2015)
- Minetti v. Port of Seattle, 152 F.3d 1113, 1115 (9th Cir. 1998)
- Tripati v. First Nat. Bank & Tr., 821 F.2d 1368, 1370 (9th Cir. 1987)
- McGee v. Department of Child Support Services, 584 Fed. App'x 638 (9th Cir. 2014)
- Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1965)
- Lopez v. Smith, 203 F.3d 1122, 1126-27, 1130-31 (9th Cir. 2000) (en banc)
- Neitzke v. Williams, 490 U.S. 319, 325-27 (1989)
- Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011)
- Hebbe v. Pliler, 627 F.3d 338, 342 & n.7 (9th Cir. 2010)
- Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57, 570 (2007)

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- M.M. v. Lafayette School District, 681 F.3d 1082, 1091 (9th Cir. 2012)
- Adams v. California Department of Health Services, 487 F.3d 684, 688-89 (9th Cir. 2007)
- Taylor v. Sturgell, 553 U.S. 880 (2008)
- Costantini v. Trans World Airlines, 681 F.2d 1199, 1201-02 (9th Cir. 1982)
- Lathus v. City of Huntington Beach, 56 F.4th 1238, 1243 (9th Cir. 2023)
- Cato v. United States, 70 F.3d 1103, 1105-06 (9th Cir. 1995)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Yist, 951 F.2d 1153, 1156-57 (9th Cir. 1991)

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