

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

Gaines v. Langurand

No. 2:21-cv-0808-DC-JDP (PS) (E.D. Cal. Apr. 28, 2025) (findings and recommendations) · No. 2:21-cv-0808-DC-JDP (PS) · Decided April 28, 2025

OPINION

(PS) Gaines v. Langurand

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 JENNIFER GAINES, Case No. 2:21-cv-0808-DC-JDP (PS) 12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 LANGURAND,

15 Defendant. 16

17 Plaintiff, proceeding pro se, brings this case against Carl Langurand, a California Parole 18
Officer; Napa Sheriff J. Plain; and an unnamed and unspecified number of “Doe” defendants. 19
ECF No. 33 at 1-2.1 She alleges that defendants violated her state and federal rights when her 20
abusive husband, Christopher Gaines, was released from a parole hold. Id. at 2-4. After being 21
released, Christopher Gaines allegedly sent her threatening messages and stalked her residence.

22 Id. at 5. Currently, only defendant Langurand has been served. His counsel has filed a motion
to

23 dismiss, arguing, inter alia, that Langurand passed away on December 14, 2023. ECF No. 37-3
24 at 9; see also ECF No. 30 at 1-2. I now recommend that the claims against defendant
Langurand 25 1 Defendant’s counsel argues that the second amended complaint should be
dismissed 26 because plaintiff did not, as the Federal Rules of Civil Procedure require, obtain
either leave of 27 the court or written stipulation or consent from defendant. ECF No. 37-3 at 5-9.
This argument is well taken, but, in light of plaintiff’s pro se status, I decline to recommend
dismissal on this 28 basis. 1 be dismissed. If these recommendations are adopted, I will order
defendant’s counsel to identify, 2 if possible, Langurand’s successor within thirty days.2 Thirty
days after defendant’s counsel 3 submits that filing, plaintiff may file an amended complaint
substituting the successor and 4 remedying the faults with her claims against the other defendants,
identified below. 5 I. Legal Standards 6 A complaint may be dismissed under that rule for “failure
to state a claim upon which 7 relief may be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion
to dismiss for failure to 8 state a claim, a plaintiff must allege “enough facts to state a claim to
relief that is plausible on its 9 face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). A

claim has “facial plausibility 10 when the plaintiff pleads factual content that allows the court to draw the reasonable inference 11 that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 12 (2009) (citing *Twombly*, 550 U.S. at 556). The plausibility standard is not akin to a “probability 13 requirement,” but it requires more than a sheer possibility that a defendant has acted unlawfully. 14 *Iqbal*, 556 U.S. at 678. 15 For purposes of dismissal under Rule 12(b)(6), the court generally considers only 16 allegations contained in the pleadings, exhibits attached to the complaint, and matters properly 17 subject to judicial notice, and construes all well-pleaded material factual allegations in the light 18 most favorable to the nonmoving party. *Chubb Custom Ins. Co. v. Space Sys./Loral, Inc.*, 710 19 F.3d 946, 956 (9th Cir. 2013); *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). 20 Dismissal under Rule 12(b)(6) may be based on either: (1) lack of a cognizable legal 21 theory, or (2) insufficient facts under a cognizable legal theory. *Chubb Custom Ins. Co.*, 710 F.3d 22 at 956. Dismissal also is appropriate if the complaint alleges a fact that necessarily defeats the 23 claim. *Franklin v. Murphy*, 745 F.2d 1221, 1228-1229 (9th Cir. 1984). 24 II. Analysis 25 A. Notice of Death 26 Defendant Langurand’s counsel filed a notice of death indicating that he passed away on 27 2 If identification is unsuccessful, defendant’s counsel shall submit a filing indicating as 28 much and providing a brief summary of counsel’s efforts.

1 December 14, 2023. ECF No. 30. It goes without saying that a dead person cannot litigate or be 2 sued. *LN Mgmt., LLC v. JPMorgan Chase Bank, N.A.*, 957 F.3d 943, 953 (9th Cir. 2020) (“The 3 core observation is that the dead lack the capacities that litigants must have to allow for a true 4 Article III case or controversy. We find this obvious, but sometimes stating the obvious is 5 necessary.”). When a defendant dies, however, a plaintiff may substitute their successor or 6 representative if the claims are not otherwise extinguished. Fed. R. Civ. P. 25(a). Such 7 substitution must occur within ninety days of: (1) the filing of a suggestion of death on the record; 8 and (2) the suggesting party’s service of “other parties and nonparty successors or representatives 9 of the deceased with a suggestion of death in the same manner as required for service of the 10 motion to substitute.” *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994). The ninety-day clock 11 begins only once both steps are accomplished. *Gilmore v. Lockard*, 936 F.3d 857, 865 (9th Cir. 12 2019). The Ninth Circuit has emphasized that the burden of serving or, at the very least, 13 identifying the proper successor or representative lies with the suggesting party. *Id.* at 866-67. 14 Defendant’s counsel acknowledges that the notice in this case did not identify a successor, 15 and the record lacks proof of service on any nonparty successors or representatives; thus, the 16 ninety-day limitations period has not begun to run. ECF No. 42 at 2-3. In light of the foregoing, 17 I recommend that the claims against defendant Langurand be dismissed with leave to amend. See 18 *Regan v. Dep’t of Pub. Safety*, NO. 07-00029 JMS-BMK, 2007 U.S. Dist. LEXIS 77453, *13-14 19 (Dist. Haw. Oct. 17, 2007) (dismissing claims against deceased party with leave to amend so that 20 plaintiff could pursue them, if possible, against proper successor). If that recommendation is 21 adopted, his counsel will be directed to identify the appropriate

successor or representative for 22 those claims within thirty days. Plaintiff shall have thirty days from the date of that filing to 23 submit an amended complaint against the successor or representative. 24 At this time, I find it unnecessary to consider the other arguments as to why the claims 25 against Langurand should be dismissed. 26 B. Claims Against Sheriff Plain and Other Supervisory Defendants 27 As to the supervisory defendants added in the second amended complaint, I agree with 28 defendant that plaintiff has failed to allege any specific personal involvement in the violations of 1 her rights. The second amended complaint contains only vague assertions that these defendants 2 “condoned, ratified, or encouraged” Langurand’s actions and that they failed to train Langurand 3 in how to handle domestic abuse cases. ECF No. 33 at 4-5. Section 1983 does not allow for 4 respondeat superior claims; a supervisory defendant is responsible only for his or her personal 5 actions or inaction. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (“Government officials may not 6 be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat 7 superior. . . . Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff 8 must plead that each Government-official defendant, through the official’s own individual 9 actions, has violated the Constitution.”). And vague assertions like those plaintiff advances, 10 devoid of specific claims as to how an individual supervisor was involved in an alleged rights 11 violation, are insufficient to state a claim. See *Pamer v. Schwarzenegger*, No. CIV S-07-1902- 12 MCE-CMK-P, 2010 U.S. Dist. LEXIS 135824, *28 (E.D. Cal. Dec. 22, 2010) (“Vague and 13 conclusory allegations concerning the involvement of supervisory personnel in civil rights 14 violations are not sufficient.”). Accordingly, I recommend that these claims be dismissed with 15 leave to amend so that plaintiff may, if she can, remedy this deficiency. Any successful claim 16 against these supervisory defendants must identify what actions each took or failed to take. 17 Broad, collective allegations or vague assertions that they tacitly approved or failed to intervene 18 will not suffice. 19 IV. Conclusion 20 Accordingly, it is RECOMMENDED that defendants’ motion to dismiss, ECF No. 37, be 21 GRANTED in part³ and plaintiff’s claims be DISMISSED with leave to amend. If these 22 recommendations are adopted, I will order that defendant identify the appropriate successor or 23 representative for the claims against Langurand. Plaintiff shall have an opportunity to amend 24 once that identification is filed. 25 26 27 3 I am recommending a partial grant insofar as the motion requests dismissal of the complaint without leave to amend. ECF No. 37-3 at 15-16. As discussed in the analysis, I find 28 leave to amend is warranted. 1 These findings and recommendations are submitted to the United States District Judge 2 | assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of 3 | service of these findings and recommendations, any party may file written objections with the 4 | court and serve a copy on all parties. Any such document should be captioned “Objections to 5 | Magistrate Judge’s Findings and Recommendations,” and any response shall be served and filed 6 | within fourteen days of service of the objections. The parties are advised that failure to file 7 | objections within the specified time may waive the right to appeal the District Court’s order. See 8 || *Turner v.*

Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Yist, 951 F.2d 1153 (9th Cir. 9 | 1991). 10
Wl IT IS SO ORDERED. 12 (4 ie — Dated: _ April 28, 2025 q——
13 JEREMY D. PETERSON
4 UNITED STATES MAGISTRATE JUDGE
15 16 17 18 19 20 21 22 23 24 25 26 27 28