

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Marian Anthony v. Shawn Stephen

Anthony · No. 25-cv-01550-DMS-BLM · Decided October 21, 2025

OPINION

Anthony

PER CURIAM.

1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 SOUTHERN DISTRICT OF CALIFORNIA

9 10 Case No.: 25-cv-01550-DMS-BLM

MARIAN ANTHONY,

11 Plaintiff, ORDER GRANTING DEFENDANT’S

12 v. MOTION TO DISMISS

COMPLAINT

13 SHAWN STEPHEN,

14 Defendant. [ECF No. 5] 15 16 17 Before the Court is Defendant Shawn Stephen’s motion to
dismiss Plaintiff Marian 18 Anthony’s Complaint. (Mot., ECF No. 5). Plaintiff, proceeding pro se,
filed a response in 19 opposition. (Opp’n, ECF No. 6).1 Defendant filed a reply. (Reply, ECF No.
9). For the 20 following reasons, Defendant’s motion to dismiss is granted.

21 I. BACKGROUND

22 The Court accepts the following allegations as true for purposes of resolving 23 Defendant’s
motion. Plaintiff is a resident of Escondido, California. (Compl., ECF No. 1, 24 at 2). Defendant,
a resident of Arizona, is a licensed financial officer at Northwestern 25 26 1 Plaintiff filed a
motion for reconsideration of a separate order, wherein he raised additional arguments 27 in
opposition of the motion to dismiss. (ECF No. 7). Because Plaintiff did not receive prior approval
to raise arguments beyond his Opposition, the Court declines to consider Plaintiff’s supplemental
filing here. 28 1 Mutual and an MMA fighter. (Id. at 3–4). During an altercation on August 5,
2022, a third 2 party, “Galvez,” physically restrained Defendant from “aggressively approaching”
3 Plaintiff and repeatedly told Defendant to leave Plaintiff’s home. (See id. ¶¶ 6–7). 4 Defendant
reported to police that Plaintiff pointed a gun at Defendant. (Id. ¶ 6). Defendant 5 then, when
testifying at a September 2, 2022 court hearing, falsely denied having to be 6 physically
restrained. (Id. ¶¶ 6–7). Defendant also falsely testified that Plaintiff said, “I 7 will fucking kill
you.” (Id. ¶ 7). During the same hearing, Galvez denied seeing a gun and 8 denied hearing “I will
fucking kill you,” contradicting Defendant’s account. (See id. ¶ 6). 9 Galvez also falsely denied

her initial statements about pushing Defendant away from 10 Plaintiff. (See *id.*). Plaintiff alleges that Defendant's and Galvez's false testimony is 11 "indicative of collusion and racketeering." (Id.). 12 On January 19, 2023, Defendant texted Plaintiff: "You may be texting her phone, 13 but you'll be talking to me. You'll be dealing with me now . . . I will be planted firmly in 14 your way and you will go around." (Id. ¶ 9). On September 18, 2023, Defendant mailed 15 Plaintiff a package containing a threatening message: "Your well-being is now at risk, and 16 your children's as well. Do the right thing before someone gets seriously hurt." (Id. ¶ 8). 17 Defendant texted Plaintiff on April 3, 2024. (Id. ¶ 10). On April 11, 2024, Plaintiff 18 discovered that his mailbox was "forcibly torn out of the ground." (Id.). Plaintiff alleges 19 that Defendant has "engaged in a multi-year pattern of unwanted contact, including 20 trespassing at Plaintiff's home, destruction of private property, harassing, vandalism, 21 stalking, and sending threatening communications," and willfully made false reports to 22 police officers that resulted in the "swatting" of Plaintiff's home. (Id. ¶¶ 11–12). 23 Plaintiff sued Defendant in an earlier case, *Anthony v. Stephens*, Case No. 24-cv- 24 00617, filed on April 1, 2024. (Case No. 24-cv-00617, ECF No. 1). Defendant moved to 25 dismiss the earlier case, and Plaintiff failed to respond. (Id., ECF Nos. 5, 7). Accordingly, 26 this Court dismissed the action without prejudice. (Id., ECF No. 7). Plaintiff then filed a 27 new complaint on June 17, 2025, resulting in the present case. (Compl.). This case came 28 before the Court after being transferred to the undersigned judge on October 2, 2025. (ECF 1 No. 13). In this case, Plaintiff alleges violations of 18 U.S.C. §§ 241, 242, 875, 876, 912, 2 1001, 1349, 1621, 2261A, 2510–2522, and 2331–2339B; a Bivens action; and intentional 3 infliction of emotional distress ("IIED"). (Compl.). Plaintiff alleges that this Court has 4 federal question jurisdiction over the claims. (Id. at 1–2). Defendant moves to dismiss the 5 entire action under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Mot. 3).

6 II. LEGAL STANDARD

7 A. Rule 12(b)(1) 8 Under Rule 12(b)(1), a party may move to dismiss for lack of subject-matter 9 jurisdiction. See Fed. R. Civ. P. 12(b)(1). Rule 12(b)(1) jurisdictional challenges can be 10 either facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 11 2004). "A 'facial' attack accepts the truth of the plaintiff's allegations but asserts that they 12 'are insufficient on their face to invoke federal jurisdiction.'" *Leite v. Crane Co.*, 749 F.3d 13 1117, 1121 (9th Cir. 2014) (quoting *Safe Air for Everyone*, 373 F.3d at 1039). When a 14 motion to dismiss makes a facial challenge, the court assumes the factual allegations in the 15 complaint are true and draws all reasonable inferences in the plaintiff's favor. *Doe v. Holy* 16 See, 557 F.3d 1066, 1073 (9th Cir. 2009). The plaintiff bears the burden of proving subject- 17 matter jurisdiction by a preponderance of the evidence. *Leite*, 749 F.3d at 1121. A federal 18 court must dismiss an action if it "determines . . . that it lacks subject-matter jurisdiction." 19 Fed. R. Civ. P. 12(h)(3). 20 B. Rule 12(b)(6) 21 Under Rule 12(b)(6), a party may file a motion to dismiss on the grounds that a 22 complaint "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 23 12(b)(6). A motion to dismiss under Rule 12(b)(6) "tests the legal sufficiency of a

claim.” 24 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To survive a motion to dismiss, “a 25 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief 26 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell 27 Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when 28 the plaintiff pleads factual content that allows the court to draw the reasonable inference 1 that the defendant is liable for the misconduct alleged.” *Id.* “Determining whether a 2 complaint states a plausible claim for relief will . . . be a context-specific task that requires 3 the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679. 4 “Factual allegations must be enough to raise a right to relief above the speculative level.” 5 *Twombly*, 550 U.S. at 555. If Plaintiff has “not nudged [his] claims across the line from 6 conceivable to plausible,” the Complaint “must be dismissed.” *Id.* at 570. 7 In reviewing the plausibility of a complaint on a motion to dismiss, a court must 8 “accept factual allegations in the complaint as true and construe the pleadings in the light 9 most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 10 519 F.3d 1025, 1031 (9th Cir. 2008). However, courts are not “required to accept as true 11 allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable 12 inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citation 13 omitted).

14 III. DISCUSSION

15 A. Violations of Title 18 of the United States Code 16 Plaintiff alleges violations of 18 U.S.C. §§ 241, 242, 875, 876, 912, 1001, 1349, 17 1621, 2261A, 2510–2522, and 2331–2339B. (Compl. 2–8). Defendant correctly argues 18 that these statutes do not provide a private right of action. (Mot. 4, 7). “Title 18 of the 19 United States Code does not establish any private right of action and cannot support a civil 20 lawsuit.” *Kent v. Century Manor Trust Ltd.*, No. 2:19-cv-01277 MCE AC (PS), 2019 WL 21 5596481, at *4 (E.D. Cal. Oct. 30, 2019). Plaintiff argues that these claims are not deficient 22 because he alleges a civil Racketeer Influenced and Corrupt Organization claim and 23 violations of 42 U.S.C. § 1985(3). (Opp’n 2–3). However, neither cause of action is 24 alleged in the Complaint. “In assessing the adequacy of a complaint, the Court must look 25 at the complaint itself, and not to explanations provided in the opposition.” *K.C. v. 26 Vejmolá*, No. 17CV683-LAB (NLS), 2018 WL 1083455, at *1 (S.D. Cal. Feb. 27, 2018). 27 “New or expanded allegations in opposition to a motion to dismiss are considered when 28 deciding whether to grant leave to amend, but are not considered when ruling on a 12(b)(6) 1 motion.” *Id.* Accordingly, the Court GRANTS Defendant’s motion to dismiss the Title 2 18 of the United States Code claims with leave to amend. 2 3 B. Bivens Action 4 A Bivens action is “an implied private action for damages against federal officers 5 alleged to have violated a citizen’s constitutional rights.” *Corr. Servs. Corp. v. Malesko*, 6 534 U.S. 61, 66 (2001) (emphasis added). Defendant argues that Plaintiff’s Bivens action 7 is legally deficient because Plaintiff does not allege that Defendant is a federal worker. 8 (Mot. 4–5, 8). Indeed, Plaintiff alleges that Defendant is a licensed financial officer at 9 Northwestern Mutual and an MMA fighter. (Compl. 2, ¶ 6).

Neither are federal 10 government positions. Plaintiff does not otherwise allege that Defendant acted as a federal 11 officer during the relevant times. Defendant's motion to dismiss the Bivens action is 12 GRANTED with leave to amend.

13 C. IIED

14 Because Plaintiff's federal law claims are dismissed, only the state-law IIED claim 15 remains. Defendant argues that it would be improper for this Court to maintain 16 supplemental jurisdiction over the claim, and that Plaintiff did not properly allege diversity 17 jurisdiction. (Mot. 8–9; Reply 5). Plaintiff alleges that the Court has jurisdiction only 18 pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), (Compl. 1–2), but argues in 19 his Opposition that the Court has supplemental and diversity jurisdiction over the IIED 20 claim. (Opp'n 8). The Court agrees with Defendant. Federal question jurisdiction applies 21 only to the federal law claims, which are now dismissed. Plaintiff has the burden to show 22 the Court also has jurisdiction over the IIED claim, either through supplemental or diversity 23 jurisdiction. Plaintiff fails to sufficiently allege either. Further, while Plaintiff alleges that 24 he is a resident of California and Defendant is a resident of Arizona, the "diversity 25 26 2 Plaintiff requests that this Court to refer this matter to the United States Attorney's Office for criminal 27 prosecution. (Compl. ¶ 26); (id., Prayer for Relief, ¶ C). "[T]he decision whether or not to prosecute . . . generally rests entirely in [the prosecutor's] discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 28 1 jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency." *Kanter* □□□ 2 || *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). Defendant's motion to dismiss 3 || the ITED claim is GRANTED with leave to amend.'

4 IV. CONCLUSION

5 Based on the foregoing, Defendant's motion to dismiss is: GRANTED with leave 6 ||to amend. Plaintiff may file a First Amended Complaint to cure the defects described 7 ||above no later than twenty one (21) days from the date this Order is filed. 8 IT IS SO ORDERED. 9 || Dated: October 21, 2025 2» 10 eam Sd Hon. Dana M. Sabraw V1 United States District Judge 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 light of this determination, the Court declines to address Defendant's argument that Plaintiff did not sufficiently allege an ITED claim under the /gbal/Twoombly pleading standard. (Mot. 6-7).