

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

Turner v. Jewish, et al.

No. 2:23-cv-00166-CKD P · No. No. 2:23-cv-00166-CKD P · Decided March 7, 2023

SUMMARY

The Eastern District of California dismissed without prejudice a pro se prisoner’s civil rights complaint against U.S. Marshals Service defendants for failure to state a claim and failure to comply with Rule 11’s signature requirement. The court granted plaintiff 30 days to submit a certified six-month trust-account statement and file a complete amended complaint identifying each defendant’s involvement and the constitutional deprivation alleged.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Carolyn K. Delaney                                                                                                                                                                                                                                                                                                                                                                                   |
| JURISDICTION          | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | March 7, 2023                                                                                                                                                                                                                                                                                                                                                                                        |
| DOCKET                | No. 2:23-cv-00166-CKD P                                                                                                                                                                                                                                                                                                                                                                              |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Pro se Texas state prisoner brought a civil rights action against two employees of the United States Marshals Service. The magistrate judge screened the complaint, deferred ruling on the in forma pauperis motion pending a certified trust-account statement, dismissed the complaint for failure to state a claim and failure to comply with signature requirements, and granted leave to amend. |
| STANDARD OF REVIEW    | Under 28 U.S.C. § 1915A, the court must dismiss a prisoner complaint that is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant. In evaluating failure to state a claim, the court accepts well-pleaded allegations as true and construes them in the plaintiff’s favor, but conclusory allegations and formulaic recitations do not suffice.           |
| PRECEDENTIAL VALUE    | Unpublished district-court order; precedential status unknown and not identified as precedential in the source metadata.                                                                                                                                                                                                                                                                             |
|                       |                                                                                                                                                                                                                                                                                                                                                                                                      |

## PARTIES

Clifford Pollard Turner v. Bobby J. Jewish, et al.

## TOPICS

pleadings

civil procedure

section 1983

prisoners rights

## PRACTICE AREAS

Prisoner civil rights

Federal civil procedure

Pleading standards

In forma pauperis proceedings

## QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable constitutional claim against the named federal officials.
2. Whether the complaint complied with the pleading and signature requirements of the Federal Rules of Civil Procedure and applicable local rules.
3. Whether plaintiff should receive leave to amend after dismissal of the deficient complaint.
4. Whether the court could rule on plaintiff's in forma pauperis motion without the required certified six-month trust-account statement.

## HOLDINGS

1. The complaint failed to state a claim because its vague and conclusory allegation of false imprisonment did not provide fair notice, identify the defendants' overt acts, or allege facts showing how either defendant violated plaintiff's constitutional rights.
2. The complaint was deficient because it was unsigned and did not comply with Federal Rule of Civil Procedure 11(a) and Local Rule 131(b), in addition to failing to provide fair notice of the claim.
3. Plaintiff was granted thirty days to file an amended complaint that complies with the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice.
4. The court could not rule on plaintiff's pending in forma pauperis motion until plaintiff submitted a certified copy of his prison trust-account statement for the six-month period preceding the complaint.

## KEY QUOTATIONS

*"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."*

*"There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation."*

## FACTUAL BACKGROUND

Plaintiff, a Texas state prisoner proceeding pro se, filed a three-page complaint naming two United States Marshals Service employees. The complaint alleged only "false imprisonment" and identified mental and physical anguish as the injury, without describing the defendants' conduct or linking either defendant to a

constitutional violation. The complaint was also unsigned and undated, and plaintiff had not supplied the certified trust-account statement required to resolve his in forma pauperis motion.

**PROCEDURAL HISTORY**

Plaintiff filed a three-page, unsigned and undated complaint alleging only false imprisonment and mental and physical anguish. After plaintiff failed to provide the required certified six-month prison trust-account statement despite an earlier order, the court granted one final opportunity to submit it. The court screened the complaint under 28 U.S.C. § 1915A, dismissed it, and allowed thirty days to file an amended complaint.

**DISPOSITION**

dismissed

**CASES CITED**

- Neitzke v. Williams, 490 U.S. 319, 325, 327 (1989)
- Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984)
- Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 676-78 (2009)
- Erickson v. Pardus, 551 U.S. 89, 93-94 (2007)
- Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)
- Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971)
- O'Neal v. Eu, 866 F.2d 314 (9th Cir. 1989)
- Jones v. Community Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984)
- Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980)
- Rizzo v. Goode, 423 U.S. 362 (1976)
- Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
- Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967)

**OPINION**

(PC) Turner v. Jewish

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 CLIFFORD POLLARD TURNER, No. 2:23-cv-00166-CKD P

12 Plaintiff, 13 v. ORDER 14 BOBBY J. JEWISH, et al., 15 Defendants. 16 17 Plaintiff is a Texas  
state prisoner appearing pro se in this civil rights action filed pursuant 18 to 42 U.S.C. § 1983.

This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) 19 and Local Rule 302. 20 I. In Forma Pauperis 21 On February 6, 2023, plaintiff was ordered to submit a certified copy of his inmate trust 22 account statement for the six month period immediately preceding the filing of the complaint. 23 ECF No. 4. Plaintiff submitted an amended motion to proceed in forma pauperis, but once again 24 it did not include a certified copy of his prison trust account from the institution where he is 25 confined, as required by 28 U.S.C. § 1915(a)(2). ECF No. 6. Absent this information, the court 26 is unable to rule on plaintiff's pending motion to proceed in forma pauperis. Therefore, the court 27 grants plaintiff one last opportunity to comply with the court's February 6, 2023 order by filing 28 the required information within 30 days from the date of this order. 1 II. Screening Requirement 2 The court is required to screen complaints brought by prisoners seeking relief against a 3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The 4 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally 5 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek 6 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). 7 A claim is legally frivolous when it lacks an arguable basis either in law or in fact. 8 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th

9 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an 10 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 11 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully 12 pleaded, has an arguable legal and factual basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th

13 Cir. 1989); *Franklin*, 745 F.2d at 1227.

14 In order to avoid dismissal for failure to state a claim a complaint must contain more than 15 "naked assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause 16 of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557 (2007). In other words, 17 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 18 statements do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Furthermore, a claim 19 upon which the court can grant relief has facial plausibility. *Twombly*, 550 U.S. at 570. "A 20 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw 21 the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. 22 at 678. When considering whether a complaint states a claim upon which relief can be granted, 23 the court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007), and 24 construe the complaint in the light most favorable to the plaintiff, see *Scheuer v. Rhodes*, 416 25 U.S. 232, 236 (1974). 26 III. Allegations in the Complaint 27 On January 27, 2023, the court docketed plaintiff's three-page complaint that is neither 28 signed nor dated. ECF No. 1. Plaintiff names two defendants employed by the U.S. Marshals 1 Service. ECF No. 1 at 2. The only claim for relief alleges "false imprisonment" and identifies 2 plaintiff's injury as "mental

and physical anguish.” ECF No. 1 at 3. No other information is 3 provided in the complaint. 4 IV. Legal Standards 5 Based on the named defendants in this action, it appears to the court that plaintiff is 6 attempting to file a civil action pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 7 U.S. 388 (1971). *Bivens* is the federal analog to suits brought against state officials under 42 8 U.S.C. § 1983. *Ashcroft v. Iqbal*, 556 U.S. 662, 676-76 (2009). “Because vicarious liability is 9 inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-official 10 defendant, through the official's own individual actions, has violated the Constitution.” *Id.* at 11 676. “Only federal officials who actually participate in alleged violations are subject to a *Bivens*- 12 type suit.” *O’Neal v. Eu*, 866 F.2d 314 (9th Cir. 1989) (collecting cases). “A plaintiff must plead 13 more than merely a negligent act by a federal official in order to state a colorable claim under 14 *Bivens*.” *Id.* 15 V. Analysis 16 The court finds that the allegations in plaintiff’s complaint are so vague and conclusory 17 that it fails to state a claim upon which relief can be granted. Although the Federal Rules of Civil 18 Procedure adopt a flexible pleading policy, a complaint must give fair notice and state the 19 elements of the claim plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 20 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of particularity the overt acts 21 which defendants engaged in that support plaintiff’s claim. *Id.* The court also notes an additional 22 defect in plaintiff’s complaint in that it was not signed as required by Rule 11(a) of the Federal 23 Rules of Civil Procedure. See also Local Rule 131(b). For all these reasons, plaintiff’s complaint 24 must be dismissed. The court will, however, grant leave to file an amended complaint. 25 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions 26 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See *Ellis v.* 27 *Cassidy*, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in 28 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C. 1 | § 1983 unless there is some affirmative link or connection between a defendant’s actions and the 2 || claimed deprivation. *Rizzo v. Goode*, 423 U.S. 362 (1976). Furthermore, vague and conclusory 3 || allegations of official participation in civil rights violations are not sufficient. *Ivey v. Board of 4 | Regents*, 673 F.2d 266, 268 (9th Cir. 1982). 5 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to 6 || make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended 7 || complaint be complete in itself without reference to any prior pleading. This is because, as a 8 | general rule, an amended complaint supersedes the original complaint. See *Loux v. Rhay*, 375 9 | F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no 10 || longer serves any function in the case. Therefore, in an amended complaint, as in an original 11 || complaint, each claim and the involvement of each defendant must be sufficiently alleged. 12 Accordingly, IT IS HEREBY ORDERED that: 13 1. The Clerk of Court shall update plaintiffs address on the docket to #00309400, 14 Richard P. LeBlane Unit, 3695 FM 3514, Beaumont, TX 77705. See ECF Nos. 5-6. 15 2. Plaintiff shall submit, within thirty days from the date of this order, a certified copy of 16 his prison trust account statement for the six month period

immediately preceding the 17 filing of the complaint from the institution where he is confined. 18  
3. Plaintiff's complaint is dismissed. 19 4. Plaintiff is granted thirty days from the date of service  
of this order to file an amended 20 complaint that complies with the requirements of the Civil  
Rights Act, the Federal 21 Rules of Civil Procedure, and the Local Rules of Practice. The amended  
complaint 22 must bear the docket number assigned this case and must be labeled "Amended 23  
Complaint." Failure to file an amended complaint in accordance with this order will 24 result in a  
recommendation that this action be dismissed. 25 | Dated: March 6, 2023 □□ I / dle ae

26 CAROLYNK. DELANEY

27 UNITED STATES MAGISTRATE JUDGE

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