

**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

OPINION

(PC) Turner v. Jewish

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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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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