

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Baldwin v. Fifth Third Bank, N.A. et al.

Baldwin · No. 2:24-cv-3401-DC-JDP (PS) · Decided May 22, 2025

SUMMARY

The court grants plaintiff leave to file an amended complaint and denies several motions concerning electronic filing, adding defendants, appointment of counsel, and communications. The magistrate judge recommends striking an improperly filed amended complaint, denying plaintiff’s other motions, and denying defendants’ motions to dismiss and to strike without prejudice.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 22, 2025
DOCKET	2:24-cv-3401-DC-JDP (PS)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff proceeded pro se in a removed foreclosure-related action and filed motions to amend, add defendants, obtain electronic-filing permission and appointed counsel, obtain injunctive relief, and strike filings. Defendants filed motions to dismiss and strike. The magistrate judge entered an order resolving some motions and findings and recommendations addressing the remaining motions.
STANDARD OF REVIEW	The court applied the liberal amendment standard under Federal Rule of Civil Procedure 15(a), under which leave to amend should generally be freely given. For appointment of counsel, the court considered likelihood of success on the merits and the plaintiff’s ability to articulate claims pro se in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Bryon Baldwin v. Fifth Third Bank, N.A., et al.

TOPICS

motion to amend

motions to dismiss

injunctions

pleadings

civil procedure

PRACTICE AREAS

civil procedure

commercial litigation

foreclosure

QUESTIONS PRESENTED

1. Whether plaintiff should be granted leave to file a further amended complaint.
2. Whether plaintiff's earlier motion to amend and related requests for striking filings and injunctive relief should be denied as moot or unsupported.
3. Whether plaintiff should be permitted to file electronically as a pro se litigant.
4. Whether exceptional circumstances warranted appointment of counsel.
5. Whether defendants' pending motions to dismiss and first motion to strike were mooted by the authorized amendment.
6. Whether the improperly filed amended complaint should be stricken.

HOLDINGS

1. Leave to amend was granted because amendment should generally be freely given and the court was not convinced that amendment would be futile.
2. The motions to dismiss and to strike portions of the initial complaint were mooted because the amended complaint would supersede the initial complaint; the court recommended denying those motions without prejudice.
3. Appointment of counsel was denied because plaintiff had not shown exceptional circumstances, including a likelihood of success on the merits and an inability to articulate his claims pro se in light of the complexity of the issues.
4. Plaintiff's requests to use electronic filing were denied because he did not demonstrate good cause for departing from the normal filing procedure applicable to unrepresented litigants.

KEY QUOTATIONS

"Leave to amend should generally be freely given." (at 1)

"Until the amended complaint is filed, I cannot weigh the likelihood of plaintiff's success on the merits or, indeed, the scope of his claims to determine their relation to the injunctive relief requested." (at 2)

FACTUAL BACKGROUND

Bryon Baldwin filed a foreclosure-related action against Fifth Third Bank and other defendants and proceeded without counsel. He sought leave to amend based on newly discovered evidence and to align his claims with federal law, while also filing motions for electronic filing, appointed counsel, injunctive relief, additional defendants, and other relief. Defendants moved to dismiss and to strike portions of the pleadings, including an amended complaint that the court found improperly filed.

PROCEDURAL HISTORY

Plaintiff filed an action that was removed to the Eastern District of California. While defendants' motions to dismiss and to strike were pending, plaintiff filed multiple motions and an amended complaint. The magistrate judge granted plaintiff leave to file a further amended complaint, denied several of plaintiff's motions, vacated the hearing on defendants' motion to strike, and recommended striking the improperly filed amended complaint while denying defendants' earlier motions without prejudice.

DISPOSITION

other

CASES CITED

- Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990)
- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)
- Mallard v. U.S. District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 BRYON BALDWIN, Case No. 2:24-cv-3401-DC-JDP (PS) 12 Plaintiff, 13
v. ORDER; FINDINGS AND RECOMMENDATIONS 14 FIFTH THIRD BANK, N.A. et al., 15
Defendants. 16 17 Plaintiff Bryon Baldwin has filed numerous motions seeking: to amend his
complaint, 18 permission to electronically file, injunctive relief, appointment of counsel, and to
strike certain of 19 defendants' filings.

ECF Nos. 13, 14, 16, 19, 26, 27, & 28. Also pending are defendants' 20 motions to dismiss, ECF
No. 5, to strike portions of the operative complaint, ECF No. 7, and to 21 strike plaintiff's
amended complaint, ECF No. 29.

For the reasons below, I will grant plaintiff's 22 motion to amend, ECF No. 16, deny or
recommend denying his other motions, and recommend 23 granting defendants' second motion to
strike the complaint, ECF No. 29. I will also recommend 24 that defendants' motions to dismiss
and first motion to strike be denied. ECF Nos. 5 & 7. 25 Motions to Amend the Complaint 26
Plaintiff has effectively filed two motions to amend his complaint, ECF Nos. 14 & 16, the 27 latter
of which will be granted.

In his more recent motion, plaintiff seeks leave to amend to 28 account for newly discovered
evidence, to comply with the Federal Rules of Civil Procedure, and 1 to "fully align" his claims
with federal law. ECF No. 16 at 2. Leave to amend should generally 2 be freely given. Morongo

Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990). 3 Defendants have opposed the amendment, arguing that it would be futile, ECF No. 21, but I am 4 not so convinced of that futility as to deny plaintiff an opportunity to put forth his claims in a 5 single pleading.

6 Plaintiff's earlier motion, ECF No. 14, should be denied. The request to amend therein is 7 mooted by the grant of the later motion, and his requests to strike and for injunctive relief are 8 unsupported by legal argument.¹ Accordingly, this motion should be denied in its entirety. 9 Similarly, his separate, renewed motion for temporary restraining order, ECF No. 19, should be 10 denied without prejudice.

Until the amended complaint is filed, I cannot weigh the likelihood of 11 plaintiff's success on the merits or, indeed, the scope of his claims to determine their relation to 12 the injunctive relief requested. 13 I will also deny plaintiff's motion to add additional defendants, ECF No. 26. He may add 14 those defendants in his amended complaint. 15 Motions to E-File and for Counsel 16 Plaintiff's motions to permit him to file electronically, ECF Nos. 13 & 27, are denied.

17 Generally, "any person appearing pro se may not utilize electronic filing except with permission 18 of the assigned Judge or Magistrate Judge." E.D. Cal. L.R. 133(b)(2). "Requests to use paper or 19 electronic filing as exceptions from these Rules shall be submitted as stipulations as provided in 20 L.R. 143 or, if a stipulation cannot be had, as written motions setting out an explanation of 21 reasons for the exception." E.D.

Cal. L.R. 133(b)(3). Plaintiff's does not demonstrate good cause 22 for a departure from the normal filing procedure for unrepresented litigants. He argues that it 23 would be more convenient for him, but to date he has shown no difficulty in filing numerous 24 motions. 25 His request for counsel is also denied. Plaintiff does not have a constitutional right to 26 1 This motion includes a request for permission to record a lis pendens.

ECF No. 14 at 8. 27 That request is also unsupported and should therefore be denied. See Cal. Code Civ. P. § 405.32 (requiring the court to expunge a lis pendens unless the recorder establishes "by a preponderance 28 of the evidence the probable validity of [a] real property claim"). 1 appointed counsel in this action, see *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir.

1997), and I 2 lack the authority to require an attorney to represent plaintiff. See *Mallard v. U.S. District Court 3 for the Southern District of Iowa*, 490 U.S. 296, 298 (1989). I may request the voluntary 4 assistance of counsel. See 28 U.S.C. § 1915(e)(1) ("The court may request an attorney to 5 represent any person unable to afford counsel"); *Rand*, 113 F.3d at 1525.

However, without a 6 means to compensate counsel, the court will seek volunteer counsel only in exceptional 7 circumstances. In determining whether such circumstances exist, "the district court must evaluate 8 both the likelihood of success on the merits [and] the ability of the [plaintiff] to

articulate his 9 claims pro se in light of the complexity of the legal issues involved.” Rand, 113 F.3d at 1525 10 (internal quotation marks and citations omitted).

I cannot conclude that exceptional 11 circumstances requiring the appointment of counsel are present here. Plaintiff has not 12 demonstrated that he is likely to succeed on the merits and, thus, far, he has proven capable of 13 presenting his own claims. 14 Lastly, plaintiff’s asks that he and defendants’ counsel communicate through e-mail. 15 Communication between the parties outside the courtroom and the docket is left to their 16 discretion.

The motion, ECF No. 28, is therefore denied. 17 Defendants’ Motions 18 In granting plaintiff permission to amend his complaint, defendants’ pending motions are 19 mooted. Their motion to dismiss, ECF No. 5, and to strike portions of the initial complaint, ECF 20 No. 7, are moot because the amended complaint will supersede the initial one. Defendants may, 21 of course, renew their motion to dismiss when the amended complaint is filed if they believe the 22 arguments therein still apply.

23 Defendants’ motion to strike the improperly filed amended complaint, ECF No. 29, should 24 be granted. The action shall proceed based on the amended complaint plaintiff files within thirty 25 days of this order. 26 Accordingly, it is hereby ORDERED that: 27 1. Plaintiff’s motion to amend complaint, ECF No. 16, is GRANTED. He must file his 28 amended complaint within thirty days of the date of this order’s entry.

1 2. The Clerk of Court shall send plaintiff a complaint form with this order. 2 3. Plaintiff’s motion to e-file, ECF No. 13, motion to add additional defendants, ECF No. 3 | 26, motion to appoint counsel and for permission to e-file, ECF No. 27, and to communicate with 4 | defendants through e-mail, ECF No. 28, are DENIED. 5 4.

The June 12, 2025 hearing on defendants’ motion to strike, ECF No. 29, is 6 | VACATED. 7 Further, it is RECOMMENDED that: 8 1. Plaintiff’s motion to strike, amend, and for injunctive relief, ECF No. 14, and renewed 9 | motion for temporary restraining order, ECF No. 19, be DENIED. 10 2. Defendants’ motion to strike, ECF No. 29, be GRANTED and the improperly filed 11 amended complaint, ECF No. 24, be struck from the docket.

12 3. Defendants’ motions to dismiss, ECF No. 5, and to strike, ECF No. 7, be DENIED 13 without prejudice. 14 These findings and recommendations are submitted to the United States District Judge 15 | assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within fourteen days of 16 | service of these findings and recommendations, any party may file written objections with the 17 | court and serve a copy on all parties.

Any such document should be captioned “Objections to 18 | Magistrate Judge’s Findings and Recommendations,” and any response shall be served and filed 19 | within fourteen days of service of the objections. The parties are advised that failure to file 20 | objections within the specified

time may waive the right to appeal the District Court's order. See 21 | Turner v. Duncan, 158 F.3d 449, 455 (9th Cir.

1998); Martinez v. Yist, 951 F.2d 1153 (9th Cir. 22 | 1991). 23 IT IS SO ORDERED. Dated: _ May 22, 2025 q——— 26 JEREMY D., PETERSON UNITED STATES MAGISTRATE JUDGE 28

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