

**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.

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

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