

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Maxwell v. Pacione

Maxwell · No. 1:24-cv-00409-JLT-CDB · Decided June 17, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 SHAWN MAXWELL, Case No. 1:24-cv-00409-JLT-CDB 12 Plaintiff,
FINDINGS AND RECOMMENDATIONS TO DENY PLAINTIFF’S CONSTRUED 13 v.
UNTIMELY MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT 14 LISA
PACIONE, et al., (Docs. 67, 68, 70) 15 Defendants. 14-DAY DEADLINE 16 17 I. Background 18
Plaintiff Shawn Maxwell, proceeding pro se, initiated this action with the filing of a 19 complaint
on April 4, 2024.

(Doc. 1). 20 On May 17, 2024, defendants Kern County and Kern County Department Child
Support 21 Services (“DCSS”), collectively the “County Defendants,” filed a motion to dismiss
Plaintiff’s 22 complaint. (Doc. 16).

On May 20, 2024, Defendants Cynthia Loo (“Loo”), Raymonda Marquez 23 (“Marquez”) and
Lisa Pacione (“Pacione”), collectively the “Superior Court Defendants,” filed a 24 motion to
dismiss Plaintiff’s complaint. (Doc. 17). Separately, Defendants Monica Meza Trujillo 25
 (“Trujillo”) and David Leon (“Leon”) each filed a motion to strike Plaintiff’s complaint. (Docs.

26 18, 19, 25). Plaintiff filed oppositions to each of the motions (Docs. 21, 22, 23, 36) and all 27
Defendants filed replies (Docs. 27, 28, 32, 40). On June 25, 2024, the assigned district judge 1
referred the pending motions to dismiss and to strike to the undersigned for preparation of 2
findings and recommendations. (Doc. 38). 3 On October 16, 2024, the undersigned issued findings
and recommendations to dismiss 4 with prejudice the majority of Plaintiff’s claims.

(Doc. 48). On October 10, 2024, the Court 5 entered an order adopting the undersigned’s findings
and recommendations in full and dismissed 6 the majority of Plaintiff’s claims with prejudice,
excepting only Plaintiff’s Monell claims and 7 state law causes of action against County
Defendants, which the Court dismissed without 8 prejudice. (Doc. 52).

The Court ordered: “Plaintiff is GRANTED leave to amend his complaint 9 to the extent of
pleading Monell claims and any cognizable state law causes of action against the 10 County
Defendants. Plaintiff SHALL FILE any such amended complaint within 21 days of 11 entry of
this order.” Id. at 3 (emphasis in original). 12 Plaintiff did not timely file an amended complaint.

However, on November 1, 2024, 13 Plaintiff filed a notice of appeal of this action to the Ninth Circuit Court of Appeals (Doc. 55) and 14 a motion for stay of execution of all orders pending appeal (Doc. 54). On November 25, 2024, 15 the Ninth Circuit dismissed Plaintiff's appeal for lack of jurisdiction (Doc. 60), and the mandate 16 issued on December 17, 2024 (Doc.

63). Accordingly, on December 18, 2024, the Court denied 17 Plaintiff's motion to stay as moot. (Doc. 64). 18 On January 22, 2025, the Court ordered Plaintiff to show cause why this action should 19 not be dismissed for Plaintiff's failure to timely file an amended complaint pursuant to leave 20 granted by the Court in its order dismissing Plaintiff's claims.

(Doc. 66). The Court noted in its 21 order that: 22 Even assuming arguendo that the full 21-day period within which Plaintiff was required to file any amended complaint was subject to 23 tolling during the pendency of the appeal and until the denial as moot of Plaintiff's motion to stay, more than 21 days have passed 24 since Plaintiff's motion for stay was denied and Plaintiff has failed to file anything with the Court – let alone an amended complaint 25 curing deficiencies previously noted by the Court in Plaintiff's 26 asserted Monell claims or related state law causes of action against the County Defendants over which the Court could exercise 27 supplemental jurisdiction.

1 Pending before the Court is Plaintiff's response to the Court's show cause order. (Docs. 2 67, 68). Plaintiff asserts, in brief, that he is pro se and does not have experience drafting 3 complaints, he sought help from non-lawyers, defendants would not be prejudiced, and dismissal 4 would be unjust. See *id.* Plaintiff requests the Court to accept his first amended complaint.

Id. at 5 3. With his response, Plaintiff lodged a first amended complaint with the Court. (Doc. 70). 6 II. Governing Law 7 a. Amendment 8 Federal Rule of Civil Procedure 15 permits a plaintiff to amend the complaint once as a 9 matter of course no later than 21 days after service of the complaint or 21 days after service of a 10 responsive pleading or motion to dismiss, whichever is earlier.

See Fed. R. Civ. P. 15(a)(1). After 11 such time has passed or plaintiff has once amended their complaint, amendment may only be by 12 leave of the court or by written consent of the adverse parties. Fed. R. Civ. P. 15(a)(2). "Rule 15(a) 13 is very liberal" and a court should freely give leave to amend when "justice so requires." 14 *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d 946, 951 (9th Cir.

2006); see *Chodos v. 15 W. Publ. Co.*, 292 F.3d 992, 1003 (9th Cir. 2002) ("it is generally our policy to permit amendment 16 with 'extreme liberality'") (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 17 1079 (9th Cir.1990)). 18 Granting or denying leave to amend a complaint under Rule 15 is within the discretion of 19 the court. *Swanson v. United States Forest Service*, 87 F.3d 339, 343 (9th Cir.

1996). “In exercising 20 this discretion, a court must be guided by the underlying purpose of Rule 15 to facilitate decision 21 on the merits, rather than on the pleadings or technicalities.” *United States v. Webb*, 655 F.2d 977, 22 979 (9th Cir, 1981); *Chudacoff v. Univ. Med. Ctr.*, 649 F.3d 1143, 1152 (9th Cir. 2011) (“refusing 23 Chudacoff leave to amend a technical pleading error, albeit one he should have noticed earlier, 24 would run contrary to Rule 15(a)’s intent.”).

25 A court ordinarily considers five factors in assessing whether to grant leave to amend: “(1) 26 bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) 27 whether the plaintiff has previously amended his complaint.” *Nunes v. Ashcroft*, 375 F.3d 805, 808 1 Cir. 1995); see *Atkins v. Astrue*, No. C 10–0180 PJH, 2011 WL 1335607, at *3 (N.D.

Cal. Apr. 7, 2 2011) (the five factors “need not all be considered in each case”). Undue delay, “by itself ... is 3 insufficient to justify denying a motion to amend.” *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 4 1999).

On the other hand, futility of amendment, by itself, may justify the denial of a motion for 5 leave to amend. *Bonin*, 59 F.3d at 845; cf. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 6 1052 (9th Cir. 2003) (the consideration of prejudice to the opposing party carries the greatest 7 weight). 8 In conducting this five-factor analysis, the court generally grants all inferences in favor of 9 permitting amendment.

Griggs v. Pace Am. Group, Inc., 170 F.3d 877, 880 (9th Cir. 1999). 10 b. Pleading Standards 11 The Federal Rules of Civil Procedure require that a complaint contain “a short and plain 12 statement of the claim showing that the pleader is entitled to relief [.]” Fed. R. Civ. P. 8(a)(2). 13 This means that the complaint must state its claims simply, concisely, and directly.

See *McHenry 14 v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996). These rules are satisfied if the complaint gives the 15 defendant fair notice of the plaintiff’s claim and the grounds upon which the claims rest. See 16 *Kimes v. Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996). 17 A claim is legally frivolous when it lacks an arguable basis in either law or fact. *Neitzke 18 v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.

19 1984). The Court may dismiss a claim as frivolous where it is based on an indisputably meritless 20 legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. The 21 central question is whether a constitutional claim, however inartfully pleaded, has an arguable 22 legal and factual basis. See *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir.

1989); *Franklin*, 745 23 F.2d at 1227. 24 To avoid dismissal for failure to state a claim, the complaint must contain more than 25 “labels and conclusions, and a formulaic recitation of the elements of a cause of action[.]” *Bell 26 Atlantic Corp. v. Twombly*, 550 U.S. 554, 555 (2007) (quotations and citations omitted). 27 “Threadbare recitals of the elements of a cause of action,

supported by mere conclusory 1 upon which the court can grant relief must have facial plausibility.

Twombly, 550 U.S. at 570. 2 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to 3 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 4 U.S. at 678. When considering whether a complaint states a claim upon which relief can be 5 granted, the Court must accept the allegations as true.

Erickson v. Pardus, 551 U.S. 89, 94 6 (2007). 7 In reviewing a pro se complaint, the Court is to liberally construe the pleadings in the light 8 most favorable to the plaintiff and resolve all doubts in plaintiff’s favor. Hebbe v. Pliler, 627 9 F.3d 338, 342 (9th Cir. 2010) (“where the petitioner is pro se, particularly in civil rights cases, 10 [courts should] should construe the pleadings liberally and... afford the petitioner the benefit of 11 any doubt.”); see United States v. Qazi, 975 F.3d 989, 992-93 (9th Cir.

2020) (“It is an 12 entrenched principle that pro se filings however inartfully pleaded are held to less stringent 13 standards than formal pleadings drafted by lawyers.”) (citations and internal quotations omitted). 14 However, while factual allegations are accepted as true, legal conclusions are not. Twombly, 550 15 U.S. at 555.

In giving liberal interpretation to a pro se complaint, the Court may not supply 16 essential elements of a claim that were not initially pled, Byrd v. Maricopa Cnty. Sheriff’s Dep’t, 17 629 F.3d 1135, 1140 (9th Cir. 2011), and the Court need not accept as true “allegations that are 18 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” Sprewell v. 19 Golden State Warriors, 266 F.3d 979, 988 (9th Cir.

2001). 20 Generally, if the Court finds that a pro se complaint fails to state a claim, it must give the 21 pro se litigant leave to amend the complaint “unless it is absolutely clear that the deficiencies of 22 the complaint could not be cured by amendment.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 23 2012) (quotation omitted).

However, if amendment of the pleading would be futile, leave to 24 amend may be denied. See Gonzalez v. Planned Parenthood of Los Angeles, 759 F.3d 1112, 1116 25 (9th Cir. 2014) (explaining that futility of amendment can justify the denial of leave to amend and 26 the Court’s “discretion in denying amendment is particularly broad when it has previously given 27 leave to amend”).

1 III. Discussion 2 In its order dismissing Plaintiff’s complaint, the Court granted Plaintiff leave to file an 3 amended complaint; however, Plaintiff did not timely file an amended complaint and only lodged 4 a proposed amended complaint in response to the Court’s show cause order.

Accordingly, the 5 Court will construe Plaintiff's filings (Docs. 67, 68, 70) as, more properly, an untimely motion for 6 leave to file an amended complaint. See *Castro v. United States*, 540 U.S. 375, 381–82 (2003) 7 (explaining that courts may recharacterize a pro se motion to “create a better correspondence 8 between the substance of a pro se motion's claim and its underlying legal basis”).

9 a. Plaintiff Repeats Claims Barred by the Rooker-Feldman Doctrine and Judicial 10 Immunity
11 In the undersigned's findings and recommendations to dismiss all claims with prejudice 12 excepting only those claims alleging municipal liability against the County Defendants (Doc. 48), 13 and the district judge's subsequent order adopting (Doc. 52), Plaintiff was advised that his claims 14 against the Superior Court Defendants were barred by the Rooker-Feldman doctrine, as well as 15 Eleventh Amendment and common law immunities.

(Doc. 48 at 8-13). Plaintiff was advised that 16 these “deficiencies cannot be cured by amendment of Plaintiff's complaint.” *Id.* at 24. 17 Despite this, in his proposed amended complaint, Plaintiff names the Kern County Superior 18 Court as a Defendant and includes substantially the same claims that the Court already dismissed 19 with prejudice (Doc. 52 at 3).

(Doc. 70 at 4, 12-14). Thus, for the reasons articulated in the earlier 20 findings and recommendations, Kern County Superior Court is improperly named as a Defendant 21 and these claims are improperly included in the proposed amended complaint. 22 b. Plaintiff Again Fails to Adequately Allege Section 1983 Claims Against 23 County Defendants 24 In the earlier findings and recommendations, the Court set forth the legal standards 25 applicable to claims brought under 42 U.S.C. § 1983, and specifically those brought against a 26 municipal entity under *Monell v. Dep't of Soc.*

Servs., 436 U.S. 658, 691 (1978). (Doc. 48 at 14- 27 15). Plaintiff was granted leave to amend his complaint to the extent of pleading *Monell* claims 1 The proposed amended complaint again fails to adequately allege policies, practices 2 and/or training by County Defendants with sufficient clarity to state a cognizable *Monell* claim. 3 First, under the portion of his proposed amended complaint titled “*Monell* Claim for 4 Unconstitutional Policies or Practices – 42 U.S.C. § 1983,” Plaintiff again includes improper 5 claims against the Kern County Superior Court which the Court previously dismissed with 6 prejudice, as set forth above in subsection (a) above.

(Doc. 70 at 15-16). Regarding County 7 Defendants, Plaintiff merely provides conclusory language with no supporting facts that 8 evidences any policy, practice, or training. The Court is unable to draw any reasonable inferences 9 from Plaintiff's meager pleadings about the existence of any operative policy, practice, or training 10 the resulted in Defendants' alleged violation of Plaintiff's constitutional rights.

Thus, Plaintiff 11 states summarily that County Defendants “maintained a policy or custom of initiating 12 enforcement actions,” “exhibited a pattern of selectively enforcing Title IV-D obligations,” and 13 “prioritized Title IV-D enforcement actions as a revenue-generating tool for the county ... 14 incentivizing the filing of baseless claims.” Id. at 17. Plaintiff provides no facts, argument, or 15 reasoning to support any such claims.

16 c. Further Leave to Amend Would Be Futile 17 Notwithstanding the Court’s earlier grant of leave to amend, Plaintiff failed to file his 18 amended complaint within the deadline established by the Court. Plaintiff now seeks leave to file 19 his amended complaint, but despite having significantly more time than the 21 days granted to 20 him to file his amended complaint (Doc.

52), Plaintiff has lodged a proposed amended complaint 21 repleading claims already dismissed with prejudice and again failing to properly allege Monell 22 claims. 23 In considering the five factors set forth in Nunes, the undersigned finds that Plaintiff unduly 24 delayed by failing to file his amended complaint within the deadline established by the Court.

More 25 importantly, however, any further leave to amend would be futile. Despite the Court’s recitation 26 of the governing legal standards in its findings and recommendation (Doc. 48) and order adopting 27 (Doc. 52), Plaintiff has repleaded barred causes of action against immune Defendants and failed to 1 Accordingly, the undersigned will recommend that Plaintiff’s motion for leave to amend 2 | the complaint be denied.

3 IV. Conclusion and Recommendation 4 For the foregoing reasons, the undersigned HEREBY RECOMMENDS that Plaintiff’s 5 || request to accept first amended complaint (Docs. 67, 68, 70), construed as an untimely motion for 6 | leave to file amended complaint, be DENIED. 7 These Findings and Recommendations will be submitted to the United States District 8 | Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)().

Within 14 days 9 | after being served with a copy of these Findings and Recommendations, a party may file written 10 | objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to 11 | Magistrate Judge’s Findings and Recommendations” and shall not exceed 15 pages without 12 | leave of Court and good cause shown.

The Court will not consider exhibits attached to the 13 | Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference the 14 | exhibit in the record by its CM/ECF document and page number, when possible, or otherwise 15 | reference the exhibit with specificity. Any pages filed in excess of the 15-page limitation may be 16 | disregarded by the District Judge when reviewing these Findings and Recommendations under 28 17 | US.C. § 636(b)()(C).

A party’s failure to file any objections within the specified time may result 18 | in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). 19 | IT IS

SOORDERED. | Dated: _ June 17, 2025 | hr 21 UNITED STATES MAGISTRATE JUDGE 22 23
24 25 26 27 28

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