

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Avila v. United States Marshals, et al.

Avila · No. 2:23-cv-0136 CKD P · Decided March 2, 2023

SUMMARY

The United States District Court for the Eastern District of California grants Nehemiah Avila leave to proceed in forma pauperis in his 42 U.S.C. § 1983 action. The court dismisses the complaint for failure to state a claim but grants thirty days to file an amended complaint addressing defendant involvement, municipal liability, and administrative exhaustion. The order also directs collection of the statutory filing fee from plaintiff's trust account.

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 2, 2023
DOCKET	2:23-cv-0136 CKD P
DISPOSITION	other
PROCEDURAL POSTURE	A prisoner proceeding pro se under 42 U.S.C. § 1983 sought leave to proceed in forma pauperis. The court screened the complaint under 28 U.S.C. § 1915A and dismissed it for failure to state a claim, while granting leave to amend.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915A, the court must dismiss a prisoner's complaint or any portion of it 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 factual allegations as true and construes them in the plaintiff's favor, but requires factual content sufficient to make the claim facially plausible.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential
PARTIES	Nehemiah Avila v. United States Marshals, et al.

TOPICS

prisoners rights

section 1983

civil procedure

pleadings

PRACTICE AREAS

prisoner civil rights

federal civil procedure

constitutional litigation

QUESTIONS PRESENTED

1. Whether the complaint stated a claim for relief under 42 U.S.C. § 1983 under the pleading standards applicable to prisoner complaints.
2. Whether the complaint was subject to dismissal under the mandatory screening requirements of 28 U.S.C. § 1915A.
3. Whether plaintiff should be granted leave to amend the deficient complaint.
4. Whether plaintiff's request to proceed in forma pauperis should be granted and the statutory filing fee assessed under 28 U.S.C. § 1915.

HOLDINGS

1. The complaint failed to state a claim upon which relief could be granted because it did not sufficiently allege a constitutional deprivation or an affirmative link between each defendant's actions and the alleged deprivation.
2. A prisoner complaint against a governmental entity, officer, or employee must be screened and dismissed if it is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant.
3. Municipalities cannot be held vicariously liable under § 1983 for the actions of their employees; liability requires that execution of a governmental policy or custom caused the injury.
4. 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.

KEY QUOTATIONS

“Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.” (at 4)

“Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.” (at 6)

FACTUAL BACKGROUND

Nehemiah Avila, a Sacramento County Jail prisoner, filed a pro se action seeking relief under 42 U.S.C. § 1983 against the United States Marshals and other defendants, including Nevada and Sacramento County Sheriffs as referenced in the order. The court concluded that the complaint did not state a federal claim and did not adequately connect each defendant's conduct to an alleged constitutional deprivation. The court dismissed the complaint but permitted amendment.

PROCEDURAL HISTORY

Avila filed a prisoner civil-rights complaint and an application to proceed in forma pauperis. The court granted in forma pauperis status, assessed the statutory filing fee and payment obligations, screened the complaint, dismissed it for failure to state a claim, and allowed thirty days to file an amended complaint.

DISPOSITION

other

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, 678 (2009)
- Erickson v. Pardus, 551 U.S. 89, 93-94 (2007)
- Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)
- 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)
- Monell v. Department of Social Services, 436 U.S. 658, 691, 694 (1978)
- Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 NEHEMIAH AVILA, No. 2:23-cv-0136 CKD P 12 Plaintiff, 13 v. ORDER
14 UNITED STATES MARSHALS, et al., 15 Defendants. 16 17 Plaintiff is a Sacramento County
Jail prisoner proceeding pro se and seeking relief 18 pursuant to 42 U.S.C. § 1983. This
proceeding was referred to this court by Local Rule 302 19 pursuant to 28 U.S.C. § 636(b)(1).

20 Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a 21 declaration
that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. 22 Plaintiff is
required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 23 1914(a), 1915(b)
(1). By separate order, the court will direct the appropriate agency to collect the 24 initial partial
filing fee from plaintiff's trust account and forward it to the Clerk of the Court.

25 Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding
26 month's income credited to plaintiff's prison trust account. These payments will be forwarded

by 27 the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account
28 exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a 2
governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The 3
court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b)(1),(2). 6 A claim is legally frivolous when it lacks an arguable basis either
in law or in fact. 7 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d
1221, 1227-28 (9th Cir. 1984).

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

1989); *Franklin*, 745 F.2d at 1227. 13 In order to avoid dismissal for failure to state a claim a
complaint must contain more than 14 "naked assertions," "labels and conclusions" or "a formulaic
recitation of the elements of a cause 15 of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
555-557 (2007).

In other words, 16 "[t]hreadbare recitals of the elements of a cause of action, supported by mere
conclusory 17 statements do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
Furthermore, a claim 18 upon which the court can grant relief has facial plausibility. *Twombly*,
550 U.S. at 570. "A 19 claim has facial plausibility when the plaintiff pleads factual content that
allows the court to draw 20 the reasonable inference that the defendant is liable for the misconduct
alleged." *Iqbal*, 556 U.S. 21 at 678.

When considering whether a complaint states a claim upon which relief can be granted, 22 the
court must accept the allegations as true, *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007), and 23
construe the complaint in the light most favorable to the plaintiff, see *Scheuer v. Rhodes*, 416 24
U.S. 232, 236 (1974). 25 The court has reviewed plaintiff's complaint and finds that it fails to state
a claim upon 26 which relief can be granted under federal law.

Plaintiff's complaint must be dismissed. The 27 court will, however, grant leave to file an
amended complaint. 28 // 1 If plaintiff chooses to amend the complaint, plaintiff must
demonstrate how the conditions 2 complained of have resulted in a deprivation of plaintiff's
constitutional rights. See *Ellis v. 3 Cassidy*, 625 F.2d 227 (9th Cir. 1980). Also, in his amended
complaint, plaintiff must allege in 4 specific terms how each named defendant is involved.

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. *Rizzo v. Goode*, 423 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient. *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir.

1982). With respect to defendants Nevada and Sacramento County Sheriffs, plaintiff is informed that municipalities cannot be held vicariously liable under § 1983 for the actions of their employees. *Monell v. Dep't of Social Services*, 436 U.S. 585 at 691, 694 (1978). "Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." *Id.* at 694.

Plaintiff is advised that under 42 U.S.C. § 1997e(a) "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff's amended complaint complete.

Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. See *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any function in the case.

Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged. In accordance with the above, IT IS HEREBY ORDERED that: 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted. 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

All fees shall be collected and paid in accordance with this court's order to Sacramento County Sheriff filed concurrently herewith. 3. Plaintiff's complaint is dismissed. 4. Plaintiff is granted thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice.

The amended complaint must bear the docket number assigned this case and must be labeled "Amended Complaint." Failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed. Dated: March 2, 2023 / ae / a Ly a 4 CAROLYN K DELANEY UNITED STATES MAGISTRATE JUDGE 14 15 16 17 18 | 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

