

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Whitall v. Gutierrez

No. 18-cv-01376-CRB (N.D. Cal. Mar. 5, 2025) · No. 18-cv-01376-CRB · Decided March 5, 2025

OPINION

Whitall v. Gutierrez

PER CURIAM.

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5 IN THE UNITED STATES DISTRICT COURT

6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 8 RAYMOND RICHARD WHITALL, Case No. 18-cv-01376-CRB 9 Plaintiff,

ORDER GRANTING MOTION FOR

10 v.

JUDGMENT ON THE PLEADINGS

11 J. CABALLERO, et al., 12 Defendants. 13 In anticipation of trial, which is scheduled to begin
June 2, 2025, Defendants move 14 for judgment on the pleadings as to two of Plaintiff Raymond
Richard Whitall’s elder- 15 abuse claims. They seek to dismiss one because it has no statutory
basis and the other 16 because it is duplicative of a third elder-abuse claim that Defendants do not
challenge. The 17 Court finds this matter suitable for resolution without a hearing pursuant to
Local Civil

18 Rule 7-1(b) and GRANTS Defendants’ motion.

19 I. BACKGROUND

20 The thrust of Whitall’s claims is that Defendants, prison officers at Salinas Valley 21 State
Prison, repeatedly struck him in the head following a strip search on February 28, 22 2017.
Second Am. Compl. (dkt. 8) ¶¶ 49–52. Whitall asserts various claims against 23 Defendants, but
only three are relevant here: (1) dependent adult abuse, (2) battery against 24 a dependent adult,
and (3) dependent adult endangerment. Id. ¶¶ 105, 114–15.

25 II. DISCUSSION

26 The three above claims are purportedly brought under California’s Elder Abuse and 27
Dependent Adult Civil Protection Act. See Cal. Welfare & Inst. Code § 15657. The 1
“endangerment” of dependent adults. Accordingly, Whitall’s battery claim is duplicative 2 of and
subsumed by his abuse claim and can be dismissed. See *Hearns v. Gonzalez*, No. 3 17-cv-38-AWI,
2018 WL 1790800, at *2 (E.D. Cal. Apr. 16, 2018) (dismissing duplicative 4 claims). And his
endangerment claim must be dismissed for lack of a statutory basis. See 5 *Nzongola v. City of*
Salinas, No. C-95-20199-JW, 1996 WL 37790, at *2 (N.D. Cal. Jan. 6 19, 1996) (courts can

dismiss “claims of infringement of nonexistent rights”). 7 Whitall seeks to avoid this result in two ways. First, he argues that he asserted 8 alternative bases than the Elder Abuse and Dependent Adult Civil Protection Act that 9 authorize his standalone battery and endangerment claims. Second, he argues that 10 Defendants’ motion is untimely. Neither argument holds water. 11 A. Alternative Bases 12 In Whitall’s pro se complaint, he did assert several alternative legal bases for his 13 battery and endangerment claims, including the Eighth and Fourteenth Amendments to the 14 U.S. Constitution; sections 13 and 17 of article I of the California Constitution; California 15 Civil Code sections 43, 51.7, 52, 52.1, 1708, and 1714; 29 U.S.C. § 794; California Penal 16 Code sections 147, 149, 243.25, 368, 422.6, 673, and 2650; and California Government 17 Code section 815.6. But none of these is a viable foundation for his claims. 18 For one, most of these sources do not authorize private rights of action. See *Egbert v. Boule*, 596 U.S. 482, 491–92 (2022) (limiting claims directly under the U.S. 20 Constitution); *Leshner v. City of Anderson*, --- F. Supp. 3d ---, No. 21-cv-386 WBS, 2025 21 WL 268615, at *4 (E.D. Cal. Jan. 22, 2025) (no claims directly under section 13 of the 22 California Constitution); *Giraldo v. Dep’t of Corr. & Rehab.*, 168 Cal. App. 4th 231, 253– 23 57 (2008) (no claims directly under section 17 of the California Constitution); *Ruiz v. Gonzalez*, No. 22-cv-1133-JDP, 2023 WL 2088364, at *2 (E.D. Cal. Feb. 17, 2023) (no 25 claims directly under the California Penal Code). Others, like the Rehabilitation Act, are 26 not even relevant to purported elder-abuse claims. See *Ellison v. USPS*, 84 F.4th 750, 756 27 (7th Cir. 2023) (elements of a Rehabilitation Act claim). These authorities, in other words, 1 So Whitall’s argument really boils down to the idea that the Tom Bane Civil Rights 2 Act provides a vehicle through which he can assert his various constitutional and statutory 3 claims. Opp. (dkt. 227) at 7. And to be sure, the Bane Act provides for a private cause of 4 action based on interference with “the exercise or enjoyment by any individual or 5 individuals of rights secured by the Constitution or laws of the United States, or of the 6 rights secured by the Constitution or laws of this state.” Cal. Civ. Code § 52.1. But 7 Whitall already has a Bane Act claim. See SAC ¶ 117; MSJ Order (dkt. 196) at 6 n.3. To 8 the extent he alleges that Defendants violated the U.S. and California Constitutions, the 9 California Penal Code, and the California Government Code, his existing Bane Act claim 10 already addresses those violations. See *Hearns*, 2018 WL 1790800, at *2 (dismissing 11 separate claims under the California Government Code as duplicative of Bane Act claim). 12 Meanwhile, if Whitall believes that the Bane Act provides a separate cause of action 13 specifically for battery of a dependent adult or dependent adult endangerment, he fails to 14 identify with particularity where that cause of action comes from. Constitutional 15 provisions and statutes that guarantee high-level rights like the right against cruel and 16 unusual punishment, the right to be free from harm, and others are not enough to create the 17 targeted causes of action that Whitall tries to assert here. See *Alexander v. Sandoval*, 532 18 U.S. 275, 286 (2001). This is especially true given that the California legislature has 19 already delineated which elder-abuse claims that it wants to recognize. See *Katzberg v. Regents of Univ. of Cal.*, 29 Cal. 4th 300, 325–28 (2002) (considering “the adequacy of 21 existing remedies” and “the extent to

which a constitutional tort action would change 22 established tort law”). 23 In short, California has created specific rights and remedies for dependent adults to 24 be free from “abuse,” which includes battery. The Court declines to create a separate, 25 standalone cause of action for battery of a dependent adult out of the various high-level 26 statutes and constitutional provisions that Whitall cites. Likewise, the Court will not create 27 a brand-new cause of action for dependent adult endangerment based on those authorities. B. Untimeliness 1 Whitall also argues that Defendants’ motion is untimely, stressing that it came 2 seven years into litigation and over a year after the most dispositive order. Opp. at 4–5. 3 But “Rule 12(c) of the Federal Rules of Civil Procedure [] permits motions for judgment 4 on the pleadings at any time, provided that trial is not delayed.” *Est. of Bojcic v. City of 5 San Jose*, No. C05 3877 RS, 2007 WL 3232221, at *1 (N.D. Cal. Oct. 31, 2007) (emphasis 6 in original); see also *Spears v. First Am. eAppraiseit*, No. 08-CV-868-RMW, 2013 WL 7 1748284, at *2 (N.D. Cal. Apr. 23, 2013) (rejecting untimeliness argument even though 8 defendant “had multiple opportunities to raise its pleading points”). Whitall does not 9 explain how trial would be delayed by Defendants’ motion—if anything, the Court’s ruling 10 dismissing two claims will streamline trial preparation. Compare *Erhart v. Bofl Holding, 11 Inc.*, 287 F. Supp. 3d 1046, 1062–63 (S.D. Cal. 2019) (denying motion for judgment on the 12 pleadings where defendants sought to “dispose of only part of certain claims”). 13 Whitall argues that Defendants waived their arguments by failing to raise them 14 earlier. Opp. at 5 (quoting Fed. R. Civ. P. 12(g)(2)). That is incorrect. Although 15 Defendants style their motion as one to “clean up” Whitall’s complaint, *id.* (quoting Mot. 16 (dkt. 225) at 2), their basic argument is that the challenged elder-abuse causes of action fail 17 to state a claim upon which relief can be granted. As the Court has explained, Whitall’s 18 battery claim is entirely duplicative of his abuse claim, so relief cannot be granted as to his 19 battery claim because of the rule against double recovery. See *Fuller v. Capitol Sky Park*, 20 46 Cal. App. 3d 727, 134–35 (1975). And Whitall fails to state a claim at all as to 21 endangerment, which is not contemplated by the statute. Because Defendants’ motion 22 attacks whether Whitall has adequately stated a claim upon which relief can be granted, 23 their arguments are not waived by failing to raise them earlier. Fed. R. Civ. P. 12(h)(2).1 24 25 26 1 Even if Defendants had waived their arguments, the Court retains authority to strike “any 27 redundant, immaterial, impertinent, or scandalous matter ... on its own.” Fed. R. Civ. P.

III. CONCLUSION

1 For the foregoing reasons, the Court GRANTS Defendants’ motion and dismisses 2 Whitall’s claims for battery of a dependent adult and dependent adult endangerment. 3 IT IS SO ORDERED. 4 Dated: March 5, 2025

5 CHARLES R. BREYER

United States District Judge 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27