

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Stelly v. Shiffer

Stelly · No. 24-cv-06775-JSC · Decided April 24, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
KAMANI COURVOISIER STELLY, Case No. 24-cv-06775-JSC 8 Plaintiff, ORDER
GRANTING ADDITIONAL 9 v. TIME TO FILE SIGNED AMENDED COMPLAINT 10
SHIFFER, et al., Defendants. 11 12 Plaintiff, an inmate in the Martinez Detention Facility
("MDF") proceeding without 13 representation by an attorney, filed this civil rights action under
42 U.S.C. § 1983.

The case was 14 assigned to Magistrate Judge Nathaniel E. Cousins, and Plaintiff consented to his
jurisdiction. 15 (ECF No. 4.) Judge Cousins reviewed the complaint under 28 U.S.C. § 1915A and
determined 16 that Plaintiff stated claims capable of judicial determination against Defendants
Deputy Kapustin 17 and Deputy Shiffer for using excessive force.¹ (ECF No. 7 at 2:20-21.)

Judge Cousins concluded 18 Plaintiff's remaining claims were not capable of judicial
determination (see *id.* at 3:4-8 19 (addressing claims against Deputy Cubit); *id.* at 3:9-22
(addressing claims regarding the condition 20 of his cell); *id.* at 3:23-4:9 (addressing claims
regarding his medical care), and granted Plaintiff 21 leave to file an amended complaint to correct
the deficiencies in these claims (*id.* at 4:22-23).

22 After Plaintiff filed a timely amended complaint (ECF No. 10), the case was reassigned to 23
the undersigned District Judge because Judge Cousins concluded one or more claims or 24
Defendants needed to be dismissed and Defendants had not yet consented to the jurisdiction of a
25 Magistrate Judge (ECF No. 11 (citing *Williams v. King*, 875 F.3d 500, 203 (9th Cir.

2017) 26 27 1 The order advised Plaintiff that he "may" clarify in his amended complaint whether,
at the time 1 (holding Magistrate Judge lacked jurisdiction to dismiss claims on initial review
because unserved 2 defendants had not consented to proceed before magistrate judge)).

The amended complaint, 3 however, is not signed. (See ECF No. 10 at 3.) Rule 11(a) of the
Federal Rules of Civil 4 Procedure provides: 5 Every pleading, written motion, and other paper
must be signed by at least one attorney of record in the attorney's name—or by a party 6
personally if the party is unrepresented. ... The court must strike an unsigned paper unless the
omission is promptly corrected after being 7 called to the attorney's or party's attention.

8 Fed. R. Civ. P. 11(a). 9 So, on or before May 30, 2025, Plaintiff may file a signed amended complaint. This may 10 be a copy of the amended complaint he already filed, but with his signature, or a new amended 11 complaint with his signature. With respect to his amended complaint, Plaintiff is reminded: 12 The amended complaint must include the caption and civil case number used in this order, Case No. 24-cv-06775 [JSC] (PR), and 13 the words “AMENDED COMPLAINT” on the first page.

If using the court form complaint, Plaintiff must answer all the questions on 14 the form in order for the action to proceed. The amended complaint supersedes the original, the latter being treated thereafter as 15 nonexistent. *Ramirez v. Cty. Of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). Consequently, claims not included in an 16 amended complaint are no longer claims, and defendants not named in an amended complaint are no longer defendants.

See *Ferdik v. 17 Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992) 18 (ECF No. 7 at 4:24-5:5.) 19 Plaintiff’s failure to file a signed amended complaint by the deadline and in 20 accordance with the order of dismissal with leave to amend (ECF No. 7) will result in the 21 unsigned amended complaint being stricken, the case proceeding only on the basis of the 22 excessive force claims against Deputies Kapustin and Shiffer from the original complaint, 23 and the dismissal of all other claims without further leave to amend.

24 IT IS SO ORDERED. 25 Dated: April 24, 2025 26 27