

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

Evans v. Jusino

Case No. 25-cv-00205-JSC (N.D. Cal. June 2, 2025) · No. 25-cv-00205-JSC · Decided June 2, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
JILL M. EVANS, Case No. 25-cv-00205-JSC 8 Plaintiff, ORDER DIRECTING PLAINTIFF TO
9 v. PROVIDE LOCATION OF DEFENDANT FOR SERVICE 10 T. JUSTINO, Defendant. 11
12 INTRODUCTION 13 Plaintiff, a prisoner in a Colorado state prison — La Vista Correctional
Facility in Pueblo, 14 Colorado — proceeding without an attorney, filed this civil rights action.

The complaint was 15 dismissed with leave to amend, and Plaintiff has filed a timely amended
complaint. (ECF Nos. 9, 16 10.) Plaintiff’s claims arise from events that occurred while she was in
federal custody at the 17 Federal Correctional Institute in Dublin, California (“FCI Dublin”)
immediately prior to her 18 transfer to her present institution. (ECF No. 10 at 1.)

Plaintiff sues the former FCI Dublin 19 Warden T. Jusino for delaying her release from federal
custody for 310 days. (Id. at 1-2.) For the reasons discussed below, Plaintiff’s amended complaint,
when liberally construed, states a claim 20 that is capable of judicial determination. Plaintiff has
not, however, provided a location for 21 Defendant where she can be served.

Plaintiff must provide such an address on or before August 22 25, 2025, or the case will be
dismissed without prejudice under Rule 4(m) of the Federal Rules of 23 Civil Procedure. 24
STANDARD OF REVIEW 25 Federal courts must engage in a preliminary screening of cases in
which prisoners seek 26 redress from a governmental entity or officer or employee of a
governmental entity.

28 U.S.C. § 27 1 or dismiss the complaint, or any portion of the complaint, if the complaint “is
frivolous, malicious, 2 or fails to state a claim upon which relief may be granted,” or “seeks
monetary relief from a 3 defendant who is immune from such relief.” Id. § 1915A(b). Pleadings
filed by parties 4 unrepresented by an attorney must be liberally construed.

Balistreri v. Pacifica Police Dep’t, 901 5 F.2d 696, 699 (9th Cir. 1990). 6 Federal Rule of Civil
Procedure 8(a)(2) requires only “a short and plain statement of the 7 claim showing that the
pleader is entitled to relief.” “Specific facts are not necessary; the 8 statement need only give the
defendant fair notice of what the.... claim is and the grounds upon which it rests.” Erickson v.
Pardus, 127 S. Ct.

2197, 2200 (2007) (citations omitted). Although to 9 state a claim a complaint “does not need detailed factual allegations,... a plaintiff’s obligation to 10 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a 11 formulaic recitation of the elements of a cause of action will not do.... Factual allegations must 12 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 13 550 U.S. 544, 550 (2007) (citations omitted).

A complaint must proffer “enough facts to state a 14 claim for relief that is plausible on its face.” *Id.* at 555. 15 A private right of action for damages may be implied from the Constitution itself for 16 constitutional violations by federal employees or their agents. See *Bivens v. Six Unknown Federal 17 Narcotics Agents*, 403 U.S. 388, 392-97 (1971). 18 DISCUSSION 19 1.

Plaintiff’s Claim 20 Plaintiff alleges on April 21, 2022, she was informed by “case management” that “she was 21 going to be released immediately from custody due to credits she earned under the First Step Act.” 22 (ECF No. 10 at 1.)

However, Defendant T. Jusino, who was at the time the Acting Warden of FCI 23 Dublin, did not release her until February 15, 2023, 310 days later. (*Id.* at 1-2.) She alleges this 24 delayed her transfer to state prison in Colorado to begin serving her state sentence, as well as the 25 completion of such sentence, by 310 days. (*Id.* at 2.) She seeks monetary damages.

(*Id.* at 4.) 26 The overdetention of a prisoner beyond their release date may violate the prisoner’s Eighth 27 and Fourteenth Amendment rights. See *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) (en 1 banc). The original complaint was dismissed with leave to amend because Plaintiff had not 2 alleged any physical injury caused by her alleged overdetention.

(ECF No. 8 at 2:21-3:1 (citing 3 physical injury requirement under the Prison Litigation Reform Act (“PLRA”), 42 U.S.C. § 4 1997e(e).) In her amended complaint, Plaintiff alleges a variety of physical injuries as a result 5 Defendant’s alleged actions. (ECF No. 10 at 5-6.) She alleges she suffered weight loss, 6 headaches, “digestive issues,” and hair loss from stress, anxiety, and depression; sinus and 7 respiratory harm from asbestos and black mold at FCI Dublin; and a physical injury during a 8 medical exam.

(*Id.* at 6.) To the extent such physical injuries occurred during or were caused by 9 her overdetention at FCI Dublin, they meet the physical injury requirement of the PLRA. 10 When liberally construed, Plaintiff allegations that Defendant detained her for 310 days 11 beyond the date that prison officials had calculated her release date, states a claim against 12 Defendant for violating her Eighth and Fourteenth Amendment rights that is capable of judicial 13 determination.

14 Plaintiff alleges facts that do not plausibly relate to her overdetention or state an additional 15 claim capable of judicial determination. She alleges “negligence on behalf of Defendant [] 16

providing inadequate medical, dental, and mental healthcare,” (d. at 5 ¶ 3), but these allegations are not explained, and without more they are too vague and conclusory to state an independent “plausible” claim for relief.

See *Twombly*, 550 U.S. at 555. Plaintiff’s allegation unnamed staff members “hired by Defendant” sexually harassed her by watching her shower also does not state a plausible claim for relief against Defendant because “government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory” that they are responsible for those actions.

Iqbal, 556 U.S. at 676. 2. Defendant’s Address Although Plaintiff has stated a claim that is capable of judicial determination and review against Defendant, she has not provided Defendant’s current location.¹ Without this information, the Marshal cannot serve her. 1 In cases involving plaintiffs proceeding in forma pauperis (IFP), the “officers of the court shall issue and serve all process.” 28 U.S.C. § 1915(d).

The court must appoint the United States marshal to effect service. Fed. R. Civ. P. 4(c)(3). If service of the summons and complaint is not made upon a defendant within 90 days of the filing of the complaint, the action must be dismissed without prejudice as to that defendant absent a showing of “good cause.” Fed. R. Civ. P. 4(m). 6 “[A]n incarcerated pro se plaintiff proceeding [IFP] is entitled to rely on the U.S. Marshal for service of the summons and complaint.” *Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir.

1990). 8 However, while incarcerated plaintiffs proceeding IFP may rely on service by the U.S. Marshals, 9 “a plaintiff may not remain silent and do nothing to effectuate such service. At a minimum, a 10 plaintiff should request service upon the appropriate defendant and attempt to remedy any 11 apparent defects of which [he] has knowledge.” *Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir.

12 1987). If the Marshal is unable to effectuate service through no fault of his own, e.g., because 13 plaintiff failed to provide sufficient information or because the defendant is not where plaintiff 14 claims, and plaintiff is informed, plaintiff must seek to remedy the situation or face dismissal. See 15 *Walker v. Sumner*, 14 F.3d 1415, 1421-22 (9th Cir.

1994), abrogated on other grounds by *Sandin v. Conner*, 515 U.S. 472 (1995) (prisoner failed to show cause why prison official should not be 17 dismissed under Rule 4(m) because prisoner did not prove that he provided marshal with sufficient 18 information to serve official or that he requested that official be served); see also *Del Raine v. Williford*, 32 F.3d 1024, 1029-31 (7th Cir.

1994) (prisoner failed to show good cause for failing to 20 timely effect service on defendant because plaintiff did not provide marshal with copy of amended 21 complaint until after more than

120 days after it was filed). 22 Plaintiff must provide the Court with Defendant's current location for the Marshal to serve 23 her. Plaintiff's failure to do so, or explain why she is unable to provide that information, by the 24 deadline set forth below may result in the dismissal of this case without prejudice under Rule 25 4(m).

26 CONCLUSION 27 For the foregoing reasons, on or before August 25, 2025, Plaintiff shall: (1) provide the 1 || explain why she cannot provide that information. Her failure to do so may result in the 2 || dismissal of this case without prejudice under Rule 4(m). 3 It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed 4 || of any change of address by filing a separate paper with the clerk headed "Notice of Change of 5 || Address." She also must comply with the Court's orders in a timely fashion.

Failure to do so may 6 || result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil 7 Procedure 41(b). Reasonable requests for an extension of a deadline will be allowed upon a 8 showing of good cause if the request is filed prior to the deadline. 9 IT IS SO ORDERED. 10 Dated: June 2, 2025 11 a 12 ne CQUELINE SCOTT CORL 13 United States District Judge 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28