

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

Jevarien Zymell Dunlap v. Ross Stores

Dunlap · No. 25-cv-08214-LJC · Decided January 27, 2026

OPINION

Dunlap

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 JEVARIEN ZYMELL DUNLAP, Case No. 25-cv-08214-LJC 8 Plaintiff,

ORDER TO SHOW CAUSE WHY

9 v. CASE SHOULD NOT BE DISMISSED

10 ROSS STORES, Re: Dkt. No. 1 Defendant. 11

12 I. INTRODUCTION

13 Plaintiff Jevarien Dunlap brings this action against Defendant Ross Stores. The Court 14
previously granted Dunlap's application to proceed in forma pauperis and now reviews the 15
sufficiency of Dunlap's Complaint under 28 U.S.C. § 1915(e)(2)(B). For the reasons discussed 16
below, Dunlap is ORDERED TO SHOW CAUSE why the Complaint should not be dismissed. 17
Dunlap must file no later than four weeks from the date of this Order either: (1) an amended 18
complaint that cures the defects identified in this Order; or (2) a response to this Order explaining
19 why the current Complaint is sufficient to proceed. If Dunlap does not file either an amended
20 complaint or a response by that deadline, or fails to cure the defects identified in this Order, the
21 case will be reassigned to a district judge with a recommendation that it be dismissed. 22 The
case management conference previously scheduled for February 12, 2026 is 23 CONTINUED to
May 14, 2026 at 1:30 PM, to occur via Zoom webinar videoconference. Access 24 instructions are
available at <https://cand.uscourts.gov/ljc/>. Dunlap must file a case management 25 statement no
later than May 7, 2026. If Defendant has been served and appeared by that date, 26 Defendant
must also file a case management statement by the same deadline, or the parties may 27 file a joint
case management statement.

II. ALLEGATIONS OF THE COMPLAINT

1 Dunlap alleges the following facts: 2 This happened 09/16/2025 around 7:36pm when I was
shopping in 3 Ross of 147 Serramonte Center, Daly City CA 94015. I was constantly looking and
trying on shoes while seeing a officer stand 4 right down an aisle starring at me for awhile. On top
of the officer there was this MOD named leslie who picked up items I intended to 5 purchased and

gave them to the officer who stared at me for awhile. I would say this is not racial profiling they meant to intimidate and 6 humiliate me. I was trying on shoes when the items were sitting to the right of me when I seen leslie pick them up. 7 Compl. (ECF No. 1) at 3, § V (spelling and capitalization as in original). 8 Dunlap brings claims under 42 U.S.C. § 1983 and 18 U.S.C. § 242. Compl. at 2, 5, §§ II, 9 VI. Dunlap “seek[s] 530,000 dollars from emotional distress damages as well as racial profiling.” 10 Compl. at 7, § VII. 11

III. LEGAL STANDARD

12 When an application to proceed in forma pauperis has been granted, the Court must then 13 evaluate the sufficiency of his Complaint under 28 U.S.C. § 1915(e)(2)(B), which provides in 14 relevant part that after granting permission to proceed in forma pauperis, a court “shall dismiss the 15 case at any time if the court determines that . . . the action . . . is frivolous or malicious [or] fails to 16 state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(i), (ii). When a 17 complaint fails to state a claim on which relief may be granted, a court may also dismiss the case 18 sua sponte (meaning on the court’s own initiative) under Rule 12(b)(6) of the Federal Rules of 19 Civil Procedure, regardless of whether a plaintiff is proceeding in forma pauperis. *Omar v. Sea- 20 Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987). 21 When the complaint has been filed by a pro se plaintiff, a court must “construe the 22 pleadings liberally and . . . afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 23 F.3d 338, 342 (9th Cir. 2010) (citation omitted). But “[t]hreadbare recitals of the elements of a 24 cause of action . . . do not suffice,” and a court need not credit “legal conclusions” or “mere 25 conclusory statements.” See *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). In order to state a 26 claim on which relief may be granted, the factual allegations in the complaint “must be enough to 27 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 1 (2007). A complaint must demonstrate “facial plausibility” by pleading “factual content that 2 allows the court to draw the reasonable inference that the defendant is liable for the misconduct 3 alleged.” *Iqbal*, 556 U.S. at 678. In other words, the Complaint needs to include facts, not just the 4 type of legal claim the plaintiff asserts. In assessing whether a complaint is “frivolous” under 5 § 1915, the Court may also consider whether “the facts alleged are clearly baseless, a category 6 encompassing allegations that are fanciful, fantastic, and delusional.” *Denton v. Hernandez*, 504 7 U.S. 25, 32–33 (1992). 8 Furthermore, federal courts are courts of limited subject matter jurisdiction, and a plaintiff 9 must provide a sufficient explanation of why this case falls within that jurisdiction. Two of the 10 most common grounds for federal subject matter jurisdiction are federal question jurisdiction 11 under 28 U.S.C. § 1331, which applies to claims “arising under the Constitution, laws, or treaties 12 of the United States,” and diversity jurisdiction under 28 U.S.C. § 1332(a), which applies to cases 13 where no defendant is a citizen of the same state as any plaintiff and where the amount in 14 controversy exceeds \$75,000. Federal courts “have an independent obligation to determine 15 whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.” 16 *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). 17 Courts

ordinarily must give pro se plaintiffs leave to “amend their complaint unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.” 19 *Franklin v. Murphy*, 745 F.2d 1221, 1235 n.9 (9th Cir. 1984).

20 IV. ANALYSIS

21 Dunlap asserts federal question jurisdiction under 28 U.S.C. § 1331 based on claims 22 arising under or related to 42 U.S.C. § 1983 and 18 U.S.C. § 242. Compl. at 2, § II.

23 Section 1983 provides generally (subject to various exceptions and qualifications) that a 24 plaintiff may bring a civil claim against a person acting “under color of” state law who deprives 25 the plaintiff of rights under federal law or the U.S. Constitution. 42 U.S.C. § 1983. That statute’s 26 requirement that the defendant act under color of law usually only allows for a claim against a 27 government entity or employee. There are some exceptions, like when a private person or entity 1 connection between Defendant Ross Stores and any government function or entity to support such 2 an exception here. See, e.g., *Lee v. Katz*, 276 F.3d 550, 554 (9th Cir. 2002); *Solomon v. Las Vegas 3 Metro. Police Dep’t*, 441 F. Supp. 3d 1090, 1097–99 (D. Nev. 2020). Because Dunlap does not 4 allege that Defendant Ross Stores or its employees were government entities or that they were 5 acting on behalf of the government, Dunlap has not stated a claim on which relief may be granted 6 under § 1983.

7 Section 242 is a criminal statute that includes language similar to § 1983. 18 U.S.C. § 242.

8 Private citizens generally cannot bring civil claims to enforce criminal laws, and § 242 is no 9 exception to that general rule. See, e.g., *Rockefeller v. U.S. Ct. of Appeals Off.*, for Tenth Cir. 10 Judges, 248 F. Supp. 2d 17, 23 (D.D.C. 2003) (granting a motion to dismiss because § 242 does 11 not “convey a private right of action”). Even if that were not so, § 242 only applies to defendants 12 acting “under color of any law, statute, ordinance, regulation, or custom.” 18 U.S.C. § 242. 13 “‘Under color’ of law means the same thing in § 242 that it does in the civil counterpart of § 242, 14 42 U.S.C. § 1983.” *United States v. Price*, 383 U.S. 787, 794 n.7 (1966). As discussed above in 15 the context of § 1983, Dunlap has not alleged that Defendant Ross Stores or its employees acted 16 under color of law. 17 Accordingly, Dunlap has not stated a claim on which relief may be granted under either of 18 the federal statutes cited in the Complaint. Nor is it apparent that any other law would support a 19 federal claim based on the facts Dunlap has alleged. 20 Dunlap’s allegation that Defendant’s employees “meant to intimidate and humiliate” 21 Dunlap, see Compl. at 3, perhaps suggests that Dunlap wishes to pursue a claim for intentional 22 infliction of emotion distress. Such a claim arises under state law rather than federal law, and 23 Dunlap has not shown any basis for federal subject matter jurisdiction over that potential claim. 24 See, e.g., *McIntosh v. Thomaz*, No. 19-cv-00800-JCS, 2019 WL 3363792, at *2 (N.D. Cal. May 25 14, 2019), report and recommendation adopted, 2019 WL 3804671 (N.D. Cal. Aug. 13, 2019).¹ 26 1 Dunlap’s Complaint suggests that both Dunlap and Ross Stores are citizens of California, which 27 would mean Dunlap cannot establish jurisdiction based on diversity of citizenship under 28 U.S.C. 1 Even if Dunlap could establish jurisdiction, Dunlap also has not provided sufficient factual 2

allegations to support such a claim, which requires a plaintiff to show: “(1) extreme and 3 outrageous conduct by the defendant with the intention of causing, or reckless disregard of the 4 probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional 5 distress; and (3) actual and proximate causation of the emotional distress by the defendant’s 6 outrageous conduct.” *Sandoval v. Pali Inst., Inc.*, 113 Cal. App. 5th 616, 629 (2025) (cleaned up). 7 Here, Dunlap has provided little in the way of allegations to show “extreme and outrageous 8 conduct,” and no factual allegations of “severe or extreme emotional distress.” See *id.* 9 Dunlap’s allegations regarding racial profiling are facially inconsistent. Dunlap’s claim 10 under § 242 states that Dunlap “was racially profiled,” Compl. at 5, § VI, but Dunlap’s statement 11 of facts asserts that Dunlap “would say this is not racial profiling,” Compl. at 3, § V (emphasis 12 added). But even if Dunlap had not specifically denied racial profiling in the statement of facts, 13 Dunlap does not provide factual allegations (as opposed to mere conclusory assertions) to support 14 a plausible conclusion of racial profiling, like that other shoppers of a different race from Dunlap 15 were treated differently. Dunlap also does not identify any law that would support a claim under 16 the facts asserted.

17 V. CONCLUSION

18 For the reasons discussed above, Dunlap is ORDERED TO SHOW CAUSE why this case 19 should not be dismissed as frivolous, for failure to state a claim on which relief may be granted, or 20 for lack of subject matter jurisdiction. Dunlap must file no later than four weeks from the date of 21 this Order either: (1) an amended complaint that cures the defects identified in this Order; or (2) a 22 response to this Order explaining why the current Complaint is sufficient to proceed. 23 If Dunlap files an amended complaint, it must list the same case number as this Order (25- 24 cv-08214) and must include all of the claims and alleged facts that Dunlap wishes to assert and all 25 of the defendants Dunlap wishes to sue. An amended complaint completely replaces an original 26 complaint and cannot rely on the contents of the original complaint. See *Ferdik v. Bonzelet*, 963 27 1 F.2d 1258, 1262 (9th Cir. 1992). 2 If Dunlap does not respond to this Order as required above, this case may be dismissed for 3 failure to prosecute and failure to comply with a court order, in addition to the other grounds for 4 || dismissal identified in this Order. 5 If Dunlap continues to proceed without an attorney, the Court encourages Dunlap to 6 || review the section “Representing Yourself” on the Court’s website, located at 7 || <https://www.cand.uscourts.gov/prose-litigants/>, Dunlap is also encouraged to contact the Court’s 8 || Legal Help Centers. Attorneys at the Legal Help Centers can provide basic assistance and advice 9 || to parties representing themselves but cannot provide legal representation. Dunlap may schedule 10 || an appointment by calling 415-782-8982 or emailing fedpro@sfbarr.org. 1] IT IS SO ORDERED. 12 || Dated: January 27, 2026 13 5 14 (Ae, Mri —

A.J. CISNEROS

15 ited States Magistrate Judge 16 17 Z 18 19 20 21 22 23 24 25 26 27 28

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