

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Elghembri v. Muhammad

Elghembri · No. 23-cv-03328-WHO (PR) · Decided September 18, 2025

OPINION

Elghembri v. Muhammad

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 AHMED MOHAMED ELGHEMBRI, Case No. 23-cv-03328-WHO (PR) Plaintiff, 8

ORDER DISMISSING COMPLAINT

v.

9 WITH LEAVE TO AMEND

10 MUHAMMAD, et al., 11 Defendants. Dkt. Nos. 16, 26, 27, 31, and 32 12

13 INTRODUCTION

14 Plaintiff Ahmed Mohamed Elghembri alleges that a prison chaplain, Fasih, has 15 violated his
right to the free exercise of his religion, to equal protection, and his statutory 16 rights under
RLUIPA, the Religious Land Use and Institutionalized Persons Act. 17 Defendant Fasih has filed
a motion to dismiss under Rules 8 and 12(b)(6). (Dkt. No. 16.) 18 Defendant’s motion is
GRANTED and the operative complaint is DISMISSED with 19 leave to file an amended
complaint on or before November 3, 2025. Elghembri’s free 20 exercise and statutory claims
suffer from the same defect: he fails to allege specific facts 21 in his complaint that defendant
substantially burdened his religious practice. Rather, his 22 allegations are confusing and
conclusory. His equal protection allegations fail to state a 23 claim because he has not identified in
his complaint how he is being treated differently 24 than other similarly-situated persons. 25
Failure to file a proper amended complaint by November 3, 2025 may result in 26 dismissal of
this action under Federal Rule of Civil Procedure 41(b) for failure to 27 prosecute.

1 BACKGROUND

2 Elghembri, a state prisoner who was housed at San Quentin State Prison during the 3 events at
issue here, alleges claims against Fasih, who is the Imam or Kateep at San 4 Quentin. He alleges
in his first amended complaint that Fasih violated his rights by acting 5 “in a discriminatory
manner preventing the Plaintiff” from “exercising his ‘Jumm’ah 6 services’ ” (First Am. Compl.,
Dkt. No. 8 at 1.) Jumu’ah is “a weekly Muslim 7 congregational service” that is “commanded by
the Koran and must be held every Friday 8 after the sun reaches its zenith and before the Asr, or

afternoon prayer.” *O’Lone v. Estate 9 of Shabazz*, 482 U.S. 342, 344 (1987). 10 According to Elghembri, when Fasih would give his sermon (Kutaba), attendees 11 must “stay quiet and listen” with “spiritual full attention” until it is over. (Id. at 1-2.) He 12 alleges that Fasih used the sermon to “spread his jealousy [sic] and hatredness [sic] against 13 the Plaintiff” which broke “the quietness of the spiritual service requirement by the faith.” 14 (Id. at 2.) Fasih allegedly also “engage[d] in talk with the worshippers” that violated the 15 sanctity of the Jum’ah service and its “validness.” (Id. at 2.) He further alleges that Fasih 16 acted in a “discriminatory matter” by refusing his “accommodation request for his service 17 compared to prisoners of other faiths.” (Id. at 3.) According to Elghembri, Fasih’s actions 18 violated his rights under the Free Exercise Clause, the Equal Protection Clause, and his 19 statutory rights under RLUIPA. (Id. at 4.)

20 STANDARD OF REVIEW

21 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) should be 22 granted if the complaint does not proffer “enough facts to state a claim for relief that is 23 plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). 24 Dismissal is appropriate also when pleadings show a “lack of cognizable legal theory,” or 25 “the absence of sufficient facts alleged under a cognizable legal theory,” *Balistreri v. 26 Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990) (citation omitted), or when an 27 affirmative defense is premised on facts alleged in the complaint, *Scott v. Kuhlmann*, 746 1 In ruling on a Rule 12(b)(6) motion, a court is limited to the contents of the 2 complaint. “The focus of any Rule 12(b)(6) dismissal—both in the trial court and on 3 appeal—is the complaint.” *Schneider v. CDCR*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) 4 (noting that “[i]n determining the propriety of a Rule 12(b)(6) dismissal, a court may not 5 look beyond the complaint to a plaintiff’s moving papers, such as a memorandum in 6 opposition to a defendant’s motion to dismiss.”) 7 “Rule 8(a)(2) . . . requires a ‘showing,’ rather than a blanket assertion, of 8 entitlement to relief. Without some factual allegation in the complaint, it is hard to see 9 how a claimant could satisfy the requirement of providing not only ‘fair notice’ of the 10 nature of the claim, but also ‘grounds’ on which the claim rests.” *Twombly*, 550 U.S. at 11 555 n.3.

12 DISCUSSION

13 i. Free Exercise Claim 14 “A person asserting a free exercise claim must show that the government action in 15 question substantially burdens the person’s practice of her religion.” *Jones v. Williams*, 16 791 F.3d 1023, 1031 (9th Cir. 2015). “A substantial burden . . . place[s] more than an 17 inconvenience on religious exercise; it must have a tendency to coerce individuals into 18 acting contrary to their religious beliefs or exert substantial pressure on an adherent to 19 modify his behavior and to violate his beliefs.” *Ohno v. Yasuma*, 723 F.3d 984, 1011 (9th

20 Cir. 2013) (quoting *Guru Nanak Sikh Soc’y of Yuba City v. Cnty. of Sutter*, 456 F.3d 978, 21 988 (9th Cir. 2006) (internal quotation marks and alterations omitted)). 22 Elghembri’s unadorned, generalized allegations fail to show that Fasih substantially 23 burdened his religious

practice. He says without elaboration that Fasih used the sermon to 24 spread jealousy and hatred, but he does not specify exactly how this jealousy and hate was 25 expressed. Furthermore, Elghembri must clarify his confusing allegation that Fasih used 26 the sermon to disrupt “the quietness of the spiritual service requirement by the faith.” 27 According to the operative complaint, Fasih is performing a Jumu’ah service by giving a 1 ceremony? Elghembri offers some explanation in his opposition, but I cannot consider 2 such allegations here. Review under Rule 12(b) is limited to the complaint; new 3 allegations in an opposition are “irrelevant for Rule 12(b) (6) purposes.” *Schneider*, 151 4 F.3d at 1197 n.1. Elghembri’s confusing and bare-bones allegations in his complaint are 5 insufficient under federal pleading standards. 6 The federal pleading standard “demands more than an unadorned, the-defendant- 7 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Rule 8 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief.” 9 *Twombly*, 550 U.S. at 555 n.3. “A plaintiff’s obligation to provide the ‘grounds’ of his 10 ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic 11 recitation of the elements of a cause of action will not do,” especially when a complaint is 12 attacked by a motion under Rule 12(b)(6). *Id.* In his amended complaint, Elghembri must 13 state what specific words were used, when they were spoken (whether during the sermon 14 or outside the sermon), and how such words substantially burden his religious exercise. 15 Accordingly, defendant’s motion to dismiss the Free Exercise claim under Rules 8 16 and 12 is GRANTED. This claim is DISMISSED with leave to amend. Instructions on 17 how to submit an amended complaint appear in the conclusion of this Order. 18 ii. Equal Protection 19 “The Equal Protection Clause of the Fourteenth Amendment commands that no 20 State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ 21 which is essentially a direction that all persons similarly situated should be treated alike.” 22 *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). To state a claim for relief, the plaintiff must allege that 24 the defendant state actor acted at least in part because of plaintiff’s membership in a 25 protected class. See *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013). Or put 26 slightly differently, the plaintiff “must show that a class that is similarly situated has been 27 treated disparately.” *Ariz. Dream Act Coal. v. Brewer*, 855 F.3d 957, 966 (9th Cir. 2017). 1 *City of Buenaventura*, 371 F.3d 1046, 1055 (9th Cir. 2004) (affirming dismissal of equal 2 protection claim because “[a]side from conclusory allegations, Appellant has not . . . 3 alleged how [similarly situated individuals] are treated differently”). An inmate “‘must set 4 forth specific facts showing a genuine issue’ as to whether he was afforded a reasonable 5 opportunity to pursue his faith as compared to prisoners of other faiths” and that “officials 6 intentionally acted in a discriminatory manner.” *Freeman v. Arpaio*, 125 F.3d 732, 737 7 (9th Cir. 1997), abrogated on other grounds by *Shakur v. Schriro*, 514 F.3d 878, 884-85 8 (9th Cir. 2008). 9 Elghembri’s allegation in his complaint that Fasih acted “in a discriminatory 10 manner” by refusing to accommodate his request for “his service compared to prisoners of 11 other faiths” is conclusory. He must specify what other specific groups are

similarly- 12 situated and how they are receiving different treatment. 13 In his opposition, but not in the operative complaint, Elghembri alleges that Fasih 14 intentionally discriminated against him by refusing his request to give a sermon, while 15 allowing other, less qualified, persons to give one. (Opp., Dkt. No. 19 at 6-7.) He also 16 denies in his opposition that he alleged Fasih treated him differently or in a discriminatory 17 fashion than how he treats similarly situated persons of other faiths. (Id. at 7.) Rather, he 18 alleges Fasih treated him differently than other persons of the same faith. (Id. at 7-9.) My 19 review is restricted to the contents of the complaint. Schneider, 151 F.3d at 1197 n.1. If 20 Elghembri wishes to modify his allegations, he must do so in an amended complaint. 21 Accordingly, defendant's motion to dismiss the Equal Protection claim under Rules 22 8 and 12 is GRANTED. This claim is DISMISSED with leave to amend. Instructions on 23 how to submit an amended complaint appear in the conclusion of this Order. 24

iii. RLUIPA Claim 25 Under RLUIPA, the Religious Land Use and Institutionalized Persons Act, "No 26 government shall impose a substantial burden on the religious exercise of a person residing 27 in or confined to an institution, as defined in section 1997, even if the burden results from 1 burden on that person (1) is in furtherance of a compelling governmental interest; and (2) 2 is the least restrictive means of furthering that compelling governmental interest." 42 3 U.S.C. § 2000cc-1(a). As with the above allegations, Elghembri's allegations fail to show 4 how religious exercise has been substantially burdened. In his amended complaint, he 5 must allege specific facts in support of his claim. 6 In his opposition, Elghembri alleges that the prison granted his request to have his 7 own Jumu'ah service, but Fasih "refused" his remedy by "blaming the Plaintiff to divide 8 the community." (Opp., Dkt. No. 19 at 16-17.) He also alleges that Fasih's jealousy and 9 hatred for him arises from the fact that he can read the Koran, while Fasih is unable to, 10 though he can memorize it. (Id. at 18.) I cannot consider such allegations because my 11 review is restricted to the contents of the complaint. Schneider, 151 F.3d at 1197 n.1. If 12 Elghembri wishes to modify his allegations, he must do so in an amended complaint. And 13 if he does so, he should include facts to support his allegations. 14 Accordingly, defendant's motion to dismiss the RLUIPA claim under Rules 8 and 15 12 is GRANTED. This claim is DISMISSED with leave to amend. Instructions on how to 16 submit an amended complaint appear in the conclusion of this Order.

17 OTHER MOTIONS

18 Elghembri has filed four motions or notices regarding defendant's alleged failure to 19 respond, about not receiving mail, and about not receiving defendant's reply to his 20 opposition. (Dkt. Nos. 26, 27, 31, and 32.) However, he admits he did receive defendant's 21 reply to his opposition. (Dkt. No. 26 at 1.) These motions are DENIED because there is 22 no relief I can give. Elghembri received defendant's dismissal motion as shown by the fact 23 that he filed an opposition to it. Furthermore, he admits he received defendant's reply.

24 CONCLUSION

25 The complaint is DISMISSED with leave to file an amended complaint on or before

26 November 3, 2025. The amended complaint must include the caption and civil case
27 number used in this order (23-03328 WHO (PR)) and the words SECOND AMENDED 1 } on
this Court's form, a copy of which will be sent to him. Because an amended complaint 2 ||
completely replaces the previous complaints, plaintiff must include in his first amended 3 ||
complaint all the claims he wishes to present and all of the defendants he wishes to sue. 4 || See
Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate 5 || material from
the prior complaint by reference. Failure to file a proper amended complaint 6 || by November 3,
2025 may result in dismissal of this action under Federal Rule of Civil 7 || Procedure 41(b) for
failure to prosecute. 8 The Clerk shall terminate all pending motions. 9 IT IS SO ORDERED. 10 ||
Dated: September 18, 2025 KoMQ2 11

AM H. ORRICK

a 12 United States District Judge © 15 16 Z 18 19 20 21 22 23 24 25 26 27 28