

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Mario Patino v. D. Dominguez

Patino · No. 25-cv-00589-BAS-KSC · Decided June 4, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Mario Patino’s pro se 42 U.S.C. § 1983 complaint without prejudice under 28 U.S.C. §§ 1915(e)(2) and 1915A(b) for failure to state a claim. The court rejected claims involving an allegedly unreasonable prison search, confiscation of a religious necklace, due process, and violations of California law and regulations. The court granted Patino 45 days to file a First Amended Complaint.

OPINION

Mario Patino v. D. Dominguez

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 MARIO PATINO, Case No. 25-cv-00589-BAS-KSC

CDCR #F05346,

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ORDER DISMISSING

Plaintiff,

13 COMPLAINT FOR FAILURE TO

vs. STATE A CLAIM PURSUANT TO

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28 U.S.C. §§ 1915(e)(2) AND

15 1915A(b) D. DOMINGUEZ, et al., 16 Defendants. 17 18 19 20 21 Mario Patino (“Patino” or
“Plaintiff”), a prisoner currently confined at Centinela 22 State Prison (“CEN”), is proceeding pro
se with a civil action pursuant to 42 U.S.C. § 1983. 23 This case was originally filed in the United
States District Court for the Central District of 24 California on November 22, 2024. (See ECF
No. 1.) That court granted Plaintiff’s motion 25 to proceed in forma pauperis (“IFP”) on January
24, 2025. (ECF No. 6.) On March 10, 26 2025, however, that court found venue was proper in the
Southern District of California 27 and transferred the case to this Court. (ECF No. 10.) 28 In his
Complaint, Patino alleges that Defendants violated his rights under the Fourth 1 Amendment, the
First Amendment, and the Due Process Clause by subjecting him to an 2 unreasonable search and

subsequently confiscating a religious necklace he was wearing. 3 (See generally ECF No. 1.) For the reasons discussed below, the Court dismisses the 4 Complaint without prejudice for failure to state a claim.

5 I. SCREENING PURSUANT TO 28 U.S.C. § 1915(e) AND § 1915A(b)

6 A. Legal Standards 7 Because Plaintiff is proceeding IFP, the Court must screen his Complaint and sua 8 sponte dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b), to the extent it is 9 frivolous, malicious, fails to state a claim, or seeks damages from defendants who are 10 immune. See *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc); *Rhodes 11 v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010). “The standard for determining whether 12 a Plaintiff has failed to state a claim upon which relief can be granted under 13 § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for 14 failure to state a claim.” *Watson v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Rule 15 12(b)(6) requires that a complaint “contain sufficient factual matter . . . to state a claim to 16 relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal 17 quotation marks omitted). While detailed factual allegations are not required, “[t]hreadbare 18 recitals of the elements of a cause of action, supported by mere conclusory statements, do 19 not suffice” to state a claim. *Id.* The “mere possibility of misconduct” or “unadorned, the 20 defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility 21 standard. *Id.* 22 “To establish § 1983 liability, a plaintiff must show both (1) deprivation of a right 23 secured by the Constitution and laws of the United States, and (2) that the deprivation was 24 committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698 25 F.3d 1128, 1138 (9th Cir. 2012). 26 B. Plaintiff’s Allegations 27 Patino alleges that on October 18, 2023, Dominguez, a CEN correctional officer, 28 came to his cell and ordered Patino to come out. (ECF No. 1 at 5.) Patino complied. (Id.) 1 Dominguez then handcuffed and searched Plaintiff’s person, but found no contraband. 2 (Id.) Dominguez then escorted Patino to a shower in the building, where he conducted an 3 unclothed body search, during which Dominguez discovered Patino was wearing a “St. 4 Jude yellow metal medallion necklace.” (Id.) Dominguez ordered Patino to remove the 5 necklace and Patino refused. (Id.) Shortly thereafter, Plaintiff was escorted to “medical to 6 provide a urine sample.” (Id.) 7 At some point, correctional officer Miranda ordered Patino to “relinquish” the St. 8 Jude necklace and told Plaintiff that if he refused, he would be placed in a “holding cage.” 9 (Id.) Patino explained that the necklace was a religious item that he had purchased by an 10 “approved vendor.” (Id.) 11 Correctional Sergeant Irving suggested Patino “release” the necklace “as property 12 through the mail.” (Id. at 5–6.) Patino agreed to this suggestion, filled out a property 13 release form, and gave both the form and the necklace to Miranda. (Id. at 6.) However, 14 “moments later,” Plaintiff discovered he had been “mislead[.]” and the necklace was 15 “confiscate[d] . . . without a valid reason.” (Id.) Patino was then given a document which 16 indicated the necklace was confiscated by Parkhill, another staff member. (Id.) 17 C. Discussion 18 Patino names Dominguez, Miranda, Irving and Parkhill as Defendants, in both their 19

individual and official capacities. (Id. at 3–5.) He alleges that he was unreasonably searched in violation of the Fourth Amendment, and that his necklace was improperly confiscated in violation of his First Amendment and due process rights. (Id. at 5–7.) Patino also appears to allege Defendants violated portions of the California Penal Code and Title 15 of the Code of Regulations. (Id. at 7.) He seeks money damages and injunctive relief. (Id. at 8– 9.) Plaintiff alleges his Fourth Amendment rights were violated by Dominguez and Miranda when he was searched, and his necklace confiscated, “without reason.” (Id. at 5.) The Ninth Circuit has held that the “Fourth Amendment right of people to be secure against unreasonable searches and seizures ‘extends to incarcerated prisoners; however, the reasonableness of a particular search is determined by reference to the prison context.’” *Thompson v. Souza*, 111 F.3d 694, 699 (9th Cir. 1997) (quoting *Michenfelder v. Sumner*, 486 F.2d 328, 332 (9th Cir. 1988)). While prisoners retain limited rights to bodily privacy, *Bull v. City & Cnty. of San Francisco*, 595 F.3d 964, 974–75 (9th Cir. 2010), neither routine clothed pat-down searches nor random visual strip searches of inmates violate the Fourth Amendment. See *Grummet v. Rushen*, 779 F.2d 491, 495 (9th Cir. 1985); *Hudson v. Palmer*, 468 U.S. 517, 529 (1984) (“[W]holly random searches are essential to the effective security of penal institutions.”); *Thompson*, 111 F.3d at 700 (upholding visual strip searches conducted outside prisoner’s cell as reasonably related to the legitimate penological interest in keeping drugs out of the prison). Patino has failed to plausibly allege the initial clothed search and subsequent unclothed search for contraband were unreasonable in the prison context. See *Michenfelder*, 860 F.2d at 332 (stating a strip search is only unreasonable under the Fourth Amendment where it is “excessive, vindictive, harassing, or unrelated to any legitimate penological interest”). Therefore, he has failed to state a Fourth Amendment claim. See 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A(b)(1); *Iqbal*, 556 U.S. at 678. 2. First Amendment Patino alleges that Dominguez, Miranda and Irving violated his First Amendment right to free exercise when his St. Jude necklace was confiscated. (ECF No. 1 at 6.) “Inmates . . . retain protections afforded by the First Amendment, . . . including its directive that no law shall prohibit the free exercise of religion.” *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987) (citation omitted). To implicate the Free Exercise Clause, the prisoner’s belief must be both “sincerely held” and “rooted in religious belief, not in ‘purely secular’ philosophical concerns.” *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994) (quoting *Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir. 1981)). If the inmate makes his initial showing of a sincerely held religious belief, he must then show that prison officials “substantially burdened” the practice of his religion by preventing him from engaging in conduct which he sincerely believes is consistent with his faith. See *Long v. Sugai*, 91 F.4th 1331, 1337 (9th Cir. 2024); *Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015). “A substantial burden . . . places more than an inconvenience on religious exercise; it must have a tendency to coerce individuals into acting contrary to their religious beliefs or exert substantial pressure on an adherent to modify his behavior and to violate his beliefs.” *Jones*, 791

F.3d at 1031–32 (citation 7 omitted). Even then, a substantial burden on an inmate’s religion is permitted if it “is 8 reasonably related to legitimate penological interests.”¹ *Turner v. Safley*, 482 U.S. 78, 89 9 (1987). 10 Here, Patino has not satisfied the threshold requirement that he allege facts showing 11 that his need to possess the St. Jude necklace is “sincerely held” and “rooted in religious 12 belief.” See *Malik*, 16 F.3d at 333. In addition, he has failed to plausibly allege the exercise 13 of his religion was substantially burdened by the confiscation of his necklace. See *Jones*, 14 791 F.3d at 1031. Therefore, Plaintiff has failed to state a First Amendment free exercise 15 claim. See 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A(b)(1); *Iqbal*, 556 U.S. at 678. 16 3. Due Process 17 Next, Patino alleges that all four Defendants violated his right to due process by 18 confiscating his necklace. (ECF No. 1 at 5, 7.) The Due Process Clause of the Fourteenth 19 Amendment protects individuals from state deprivations of life, liberty, or property without 20 due process of law. With respect to a prisoner’s property, the Supreme Court has held that 21 “an unauthorized intentional deprivation of property” by a prison official constitutes a 22 violation of due process if a meaningful post-deprivation remedy for the loss is unavailable. 23 24 25 1 In determining whether a prison regulation is reasonably related to a legitimate penological interest, Courts consider: (1) whether there is a valid, rational connection between the regulation and the 26 interest used to justify the regulation; (2) whether prisoners retain alternative means of exercising the right at issue; (3) the impact the requested accommodation will have on inmates, prison staff, and prison 27 resources generally; and (4) whether the prisoner has identified easy alternatives to the regulation which could be implemented at a minimal cost to legitimate penological interests. *Beard v. Banks*, 548 U.S. 521, 28 1 *Hudson*, 468 U.S. at 533. 2 Here, Patino has an adequate post-deprivation remedy under California law; 3 therefore, he may not pursue a due process claim arising out of the alleged unlawful 4 confiscation of his personal property. *Barnett v. Centoni*, 31 F.3d 813, 816–17 (9th Cir. 5 1994) (citing Cal. Gov’t Code §§ 810–95). Accordingly, he has failed to state a due process 6 claim. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *Iqbal*, 556 U.S. at 678. 7 4. State Criminal Law and Regulations 8 Finally, while not raised as a separate claim, Plaintiff also appears to allege 9 Defendants’ actions violated state criminal laws and regulations, including Sections 518– 10 21 and 484–90 of the California Penal Code, as well as Sections 3287 and 3413(a) of Title 11 15 of the California Code of Regulations. (ECF No. 1 at 7.) 12 “As a general rule, a violation of state law does not lead to liability under § 1983.” 13 *Campbell v. Burt*, 141 F.3d 927, 930 (9th Cir. 1998). Specifically, Plaintiff’s allegations 14 that Defendants violated California criminal law—even if true—are insufficient to state a 15 viable § 1983 claim. See *Ellis v. City of San Diego*, 176 F.3d 1183, 1189 (9th Cir. 1999) 16 (concluding the district court properly dismissed claims brought under several sections of 17 the California Penal Code because those code sections did not create enforceable individual 18 rights). In addition, a failure to adhere to prison regulations and guidelines does not, 19 without more, violate a federal constitutional right. *Cousins v. Lockyer*, 568 F.3d 1063, 20 1070 (9th Cir. 2009) (“[S]tate departmental regulations do not establish a federal 21 constitutional violation.”);

see also *Nible v. Fink*, 828 F. App'x 463, 464 (9th Cir. 2020) 22 (affirming dismissal of claims based on violations of Title 15 of the California Code of 23 Regulations because the regulations did not create private right of action). Therefore, to 24 the extent Plaintiff seeks relief based on purported violations of state laws and regulations 25 he fails to state a claim. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b). 26 27 28 1 D. Leave to Amend 2 In light of his pro se status, the Court grants Plaintiff leave to amend his pleading 3 ||and address the pleading deficiencies identified above. See *Rosati v. Igbinoso*, 791 F.3d 4 || 1037, 1039 (9th Cir. 2015) (“A district court should not dismiss a pro se complaint without 5 || leave to amend unless it is absolutely clear that the deficiencies of the complaint could not 6 cured by amendment.”) (quoting *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012)).

7 CONCLUSION AND ORDER

8 For the foregoing reasons, the Court: 9 1. DISMISSES Plaintiff's Complaint (ECF No. 1) in its entirety for failure to 10 a claim pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b). 11 2. GRANTS Plaintiff forty-five (45) days leave from the date of this Order in 12 || which to file a First Amended Complaint which cures the pleading deficiencies discussed 13 ||above. Plaintiff's First Amended Complaint must be complete by itself without reference 14 || to his previous pleadings. See S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard 15 || Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading 16 || supersedes the original.”). 17 If Plaintiff fails to timely file a First Amended Complaint, the Court will enter a final 18 || Order dismissing this civil action based both on failure to state a claim upon which relief 19 be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ai) and § 1915A(b)(1), and failure to 20 || prosecute in compliance with a court order requiring amendment. See *Lira v. Herrera*, 427 21 || F.3d 1164, 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of the opportunity 22 fix his complaint, a district court may convert the dismissal of the complaint into 23 || dismissal of the entire action.”). 24 IT IS SO ORDERED. 25 26 || DATED: June 4, 2025 yatta Bihar 27 Hon. Cynthia Bashant, Chief Judge 38 United States District Court