

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

Wu v. Kerstenzis

Wu v. Kerstenzis · No. 2:24-cv-3353-DJC-JDP (PS) · Decided February 28, 2025

OPINION

(PS) Wu v. Kerstenzis

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 REBECCA WU, Case No. 2:24-cv-3353-DJC-JDP (PS) 12 Plaintiff, 13 v. ORDER 14
COST KERSTENZIS, et al., 15 Defendants. 16 17 Plaintiff, proceeding without counsel, brings
this action against various defendants, 18 alleging that they violated her rights by terminating her
teaching job. ECF No. 1 at 6. Her 19 complaint cannot proceed as articulated. I will dismiss the
complaint and give plaintiff a chance 20 to amend her complaint before recommending dismissal
of the case. I will also grant her 21 application to proceed in forma pauperis, ECF No. 2, which
makes the showing required by 28 22 U.S.C. §§ 1915(a)(1) and (2). 23 Screening and Pleading
Requirements 24 A federal court must screen the complaint of any claimant seeking permission to
proceed 25 in forma pauperis. See 28 U.S.C. § 1915(e). The court must identify any cognizable
claims and 26 dismiss any portion of the complaint that is frivolous or malicious, fails to state a
claim upon 27 which relief may be granted, or seeks monetary relief from a defendant who is
immune from such 28 relief. Id. 1 A complaint must contain a short and plain statement that
plaintiff is entitled to relief, 2 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to
relief that is plausible on its 3 face,” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The
plausibility standard does not 4 require detailed allegations, but legal conclusions do not suffice.
See Ashcroft v. Iqbal, 556 U.S. 562, 678 (2009). If the allegations “do not permit the court to
infer more than the mere 6 possibility of misconduct,” the complaint states no claim. Id. at 679.
The complaint need not 7 identify “a precise legal theory.” Kobold v. Good Samaritan Reg’l Med.
Ctr., 832 F.3d 1024, 8 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set
of “allegations that 9 give rise to an enforceable right to relief.” Nagrampa v. MailCoups, Inc., 469
F.3d 1257, 1264 10 n.2 (9th Cir. 2006) (en banc) (citations omitted). 11 The court must construe a
pro se litigant’s complaint liberally. See Haines v. Kerner, 404 12 U.S. 519, 520 (1972) (per
curiam). The court may dismiss a pro se litigant’s complaint “if it 13 appears beyond doubt that
the plaintiff can prove no set of facts in support of his claim which 14 would entitle him to relief.”
Hayes v. Idaho Corr. Ctr., 849 F.3d 1204, 1208 (9th Cir. 2017). 15 However, ““a liberal

interpretation of a civil rights complaint may not supply essential elements 16 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 17 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)). 18 Analysis 19 The particulars of plaintiff’s complaint are somewhat obscured by length and lack of 20 organization, but it is apparent that the claims at issue here have been the subject of substantial 21 and, in some cases, ongoing litigation in state court. Plaintiff acknowledges this explicitly. ECF

22 No. 1 at 36-38. Some of this litigation has concluded, but at least four cases appear ongoing 23 insofar as they are labelled “not final.” Id. This state litigation, both finalized and ongoing, 24 presents obstacles to the current litigation. The ongoing cases implicate the abstention doctrine in 25 Younger v. Harris, 401 U.S. 37, 43-54 (1971), which commands federal courts to refrain from 26 interfering in parallel state court proceedings in most circumstances. The finalized cases 27 potentially implicate the Rooker-Feldman doctrine, which “prohibits a federal district court from 28 exercising subject matter jurisdiction over a suit that is a de facto appeal from a state court 1 judgment.” Kougasian v. TMSL, Inc., 359 F.3d 1136, 1139 (9th Cir. 2004). Plaintiff has filed a 2 similar case in this district, and the magistrate judge in that case made similar findings on 3 screening. See Wu v. Twin Rivers United Educators, No. 2:24-cv-2707-DAD-AC (E.D. Cal. Oct. 4 29, 2024) at ECF No. 3. 5 Accordingly, the complaint is dismissed for the reasons stated above. I will allow plaintiff 6 a chance to amend her complaint before recommending that this action be dismissed. Plaintiff 7 should take care to add specific factual allegations against each defendant and to better organize 8 her complaint. She must also explain why her claims are not barred by the doctrines discussed 9 above. If plaintiff decides to file an amended complaint, the amended complaint will supersede 10 the current one. See Lacey v. Maricopa Cnty., 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc). 11 This means that the amended complaint will need to be complete on its face without reference to 12 the prior pleading. See E.D. Cal. Local Rule 220. Once an amended complaint is filed, the 13 current one no longer serves any function. Therefore, in an amended complaint, as in the 14 original, plaintiff will need to assert each claim and allege each defendant’s involvement in 15 sufficient detail. The amended complaint should be titled “First Amended Complaint” and refer 16 to the appropriate case number. If plaintiff does not file an amended complaint, I will 17 recommend that this action be dismissed. 18 Accordingly, it is hereby ORDERED that: 19 1. Plaintiff’s request for leave to proceed in forma pauperis, ECF No. 2, is GRANTED. 20 2. Plaintiff’s complaint, ECF No. 1, is DISMISSED with leave to amend. 21 3. Within thirty days from service of this order, plaintiff shall file either (1) an amended 22 complaint or (2) notice of voluntary dismissal of this action without prejudice. 23 4. Failure to timely file either an amended complaint or notice of voluntary dismissal may 24 result in the imposition of sanctions, including a recommendation that this action be dismissed 25 with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 26 5. The Clerk of Court shall send plaintiff a complaint form with this order. 27 28 1 > IT IS SO ORDERED. 3 (| { Wine Dated: _ February 27, 2025 qe

4 JEREMY D. PETERSON

5 UNITED STATES MAGISTRATE JUDGE

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