

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Angel Luis Gallardo v. K. Gibbs, et al.

Gallardo v. Gibbs · No. 2:24-cv-2981-JDP (P) · Decided February 25, 2025

OPINION

(PC) Gallardo v. Gibbs

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 ANGEL LUIS GALLARDO, Case No. 2:24-cv-2981-JDP (P) 12 Plaintiff, 13 v. ORDER 14
K. GIBBS, et al., 15 Defendants. 16 17 Plaintiff, a state inmate, brings this § 1983 action against
K. Gibbs, Lt. Mctaggert, 18 Grijalva, and Banuro for violations related to the opening of
plaintiff’s legal mail. ECF No. 1. 19 The complaint states viable First Amendment claim against
Gibbs, Grijalva, and Banuro, but not 20 Mctaggert. Accordingly, plaintiff must decide whether to
proceed only with the viable claims, or 21 to delay serving any defendant and to file an amended
complaint. I will grant plaintiff’s 22 application to proceed in forma pauperis, which makes the
required showing. 23 Screening and Pleading Requirements 24 A complaint must contain a short
and plain statement that plaintiff is entitled to relief, 25 Fed. R. Civ. P. 8(a)(2), and provide
“enough facts to state a claim to relief that is plausible on its 26 face,” Bell Atl. Corp. v. Twombly,
550 U.S. 544, 570 (2007). The plausibility standard does not 27 require detailed allegations, but
legal conclusions do not suffice. See Ashcroft v. Iqbal, 556 U.S. 28 662, 678 (2009). If the
allegations “do not permit the court to infer more than the mere 1 possibility of misconduct,” the
complaint states no claim. Id. at 679. The complaint need not 2 identify “a precise legal theory.”
Kobold v. Good Samaritan Reg’l Med. Ctr., 832 F.3d 1024, 3 1038 (9th Cir. 2016). Instead, what
plaintiff must state is a “claim”—a set of “allegations that 4 give rise to an enforceable right to
relief.” Nagrampa v. MailCoups, Inc., 469 F.3d 1257, 1264 5 n.2 (9th Cir. 2006) (en banc)
(citations omitted). 6 The court must construe a pro se litigant’s complaint liberally. See Haines v.
Kerner, 404 7 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s
complaint “if it 8 appears beyond doubt that the plaintiff can prove no set of facts in support of his
claim which 9 would entitle him to relief.” Hayes v. Idaho Corr. Ctr., 849 F.3d 1204, 1208 (9th
Cir. 2017). 10 However, ““a liberal interpretation of a civil rights complaint may not supply
essential elements 11 of the claim that were not initially pled.”” Bruns v. Nat’l Credit Union
Admin., 122 F.3d 1251, 12 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266,
268 (9th Cir. 1982)). 13 Analysis 14 The complaint alleges that on March 28, 2024, K. Gibbs, the

mailroom supervisor, opened 15 plaintiff's legal mail. ECF No. 1 at 3. The complaint alleges that Gibbs did so to be nosey and to 16 humiliate plaintiff. Id. Later, defendant correctional officers Grijalva and Banuro pulled 17 plaintiff's legal mail out of the regular mail bag when they distributed mail. Plaintiff informed 18 the officers that a violation had occurred, and he needed to speak with a supervisor. Id. Grijalva 19 and Banuro told plaintiff to wait until he was in the yard to speak with a supervisor. The 20 correctional officers also referenced plaintiff's sexual assault case, leading him to believe that 21 they too had reviewed his legal mail. Once in the yard, plaintiff informed defendant lieutenant 22 Mctaggart what happened with his legal mail, but Mctaggart did nothing to remedy the issue. 23 Plaintiff has potentially stated a First Amendment claim against defendants Gibbs, 24 Grijalva, and Banuro for opening his legal mail outside of his presence. See *Hayes v. Idaho Corr. 25 Ctr.*, 849 F.3d 1204, 1211 (9th Cir. 2017) (holding that prisoners have "a protected First 26 Amendment interest in having properly marked legal mail opened only in their presence"). 27 Plaintiff, however, has not stated a First Amendment claim against Mctaggart. The only 28 allegation against Mctaggart is that he did "not correct his staff or anything even after being put 1 | onnotice." ECF No. | at 3. There is no allegation that Mctaggart was present when Gibbs 2 || opened the mail or when Grijalva and Banuro reviewed the contents of the mail. 3 Plaintiff may elect to purse his First Amendment claims against Gibbs, Grijalva, and 4 | Banuro, or he may file an amended complaint that addresses the deficiencies noted about 5 | defendant Mctaggart. Should plaintiff choose to file an amended complaint, Gibbs, Grijalva, and 6 | Banuro will not be served until the new complaint is screened. If plaintiff decides to file an 7 | amended complaint, the amended complaint will supersede the current one. See *Lacey v. 8 | Maricopa Cnty.*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means that the amended 9 | complaint will need to be complete on its face without reference to the prior pleading. See E.D. 10 | Cal. Local Rule 220. Once an amended complaint is filed, the current one no longer serves any 11 function. Therefore, in an amended complaint, as in the original, plaintiff will need to assert each 12 || claim and allege each defendant's involvement in sufficient detail. The amended complaint 13 | should be titled "First Amended Complaint" and refer to the appropriate case number. If plaintiff 14 | does not file an amended complaint, I will recommend that this action be dismissed. 15 Accordingly, it is hereby ORDERED that: 16 1. Plaintiffs application for leave to proceed in forma pauperis, ECF No. 2, is 17 | GRANTED. 18 2. Within thirty days from the service of this order, plaintiff must indicate his intent to 19 | proceed only with his First Amendment claims against Gibbs, Grijalva, and Banuro, or he must 20 | file another amended complaint. If he selects the latter, no defendants will be served until the 21 | new complaint is screened. 22 3. The Clerk of Court shall send plaintiff a complaint form with this order. 23 IT IS SO ORDERED. 25 (q oy — Dated: _ February 24, 2025 Q——

26 JEREMY D., PETERSON

UNITED STATES MAGISTRATE JUDGE

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