

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

Polk v. Jennie Clay, et al.

Polk · No. 24-cv-08712-TLT · Decided September 25, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
ELVIN POLK, Case No. 24-cv-08712-TLT 8 Plaintiff, ORDER OF DISMISSAL v. 9 10 JENNIE
CLAY, et al., Defendants. 11 12 13 Plaintiff, who is confined at Napa State Hospital and is
proceeding pro se, filed a civil 14 rights complaint under 42 U.S.C. § 1983 regarding the taking of
some of his property by hospital 15 staff members on December 12, 2024.

The complaint was dismissed with leave to amend, and 16 plaintiff’s First Amended Complaint
(FAC) is now before the Court for screening. Dkt. No. 23. 17 For the reasons identified below, the
complaint is dismissed without leave to amend. 18 A. Standard of Review 19 A federal court must
conduct a preliminary screening in any case in which a prisoner seeks 20 redress from a
governmental entity or officer or employee of a governmental entity.

See 28 U.S.C. 21 § 1915A(a). In its review, the court must identify any cognizable claims and
dismiss any claims 22 that are frivolous, malicious, fail to state a claim upon which relief may be
granted or seek 23 monetary relief from a defendant who is immune from such relief. See 28
U.S.C. § 1915A(b)(1), 24 (2). Pro se pleadings must, however, be liberally construed.

See *United States v. Qazi*, 975 F.3d 25 989, 993 (9th Cir. 2020). 26 Federal Rule of Civil
Procedure 8(a)(2) requires only “a short and plain statement of the 27 claim showing that the
pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not 1 grounds upon which
it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).

2 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more 3
than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
4 do.... Factual allegations must be enough to raise a right to relief above the speculative level.” 5
Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted).

A complaint must 6 proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.*
at 570. All or part 7 of a complaint filed by a prisoner may be dismissed sua sponte if the
prisoner’s claims lack an 8 arguable basis in either law or in fact. 9 To state a claim under 42
U.S.C. § 1983, a plaintiff must allege two essential elements: (1) 10 that a right secured by the
Constitution or laws of the United States was violated, and (2) that the 11 alleged violation was
committed by a person acting under the color of state law.

See *West v. Atkins*, 487 U.S. 42, 48 (1988). 13 If a court dismisses a complaint for failure to state a claim, it should “freely give 14 leave” to amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). A court has discretion to 15 deny leave to amend due to “undue delay, bad faith or dilatory motive on the part of the movant, 16 repeated failure to cure deficiencies by amendment previously allowed undue prejudice to the 17 opposing party by virtue of allowance of the amendment, [and] futility of amendment.” 18 *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir.

2008). 19 B. Plaintiff’s FAC 20 Plaintiff’s FAC names Mark Rohlena, Jennie Clay, Jan Thnay, Peter U.S., and Nomer as 21 defendants. He alleges illegal search and seizures on October 9 and December 12, 2024, that his 22 legal mail was opened on January 15, 2025, and that “they all so tamper with evidences.” He 23 alleges defendants were aware of his lawsuit with Case No. 24-cv-8712.

But the current case is 24 Case No. 24-cv-8712, so it is not possible that staff knew of this lawsuit before the searches that 25 plaintiff complains about in this lawsuit. 26 Plaintiff has not addressed the deficiencies identified in the Court’s prior order. He has not 27 explained whether he is a civil detainee or prisoner. He has not alleged facts showing that the 1 has alleged random and unauthorized deprivation of his property, which does not state a due 2 || process claim because he may bring a state tort action.

He has not explained how each defendant 3 took specific acts or failed to act in ways that violated his constitutional rights. He has filed over 4 650 pages of documents that appear to be jokes, games, drawings, invention notes, and religious 5 || content, none of which turns his claim into a cognizable one.

Because it appears that further 6 amendment would be futile, his claims are dismissed without leave to amend. 7 CONCLUSION 8 The action is dismissed without leave to amend. The Clerk shall enter judgment for the 9 defendants and close the file. 10 IT IS SO ORDERED. Dated: 11 September 25, 2025 TRINA ON 13 United States District Judge © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28