

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

Williams v. Prudhel

Williams · No. 2:22-cv-2250 CKD P · Decided March 6, 2023

OPINION

(PC) Williams v. Prudhel

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 BOBBY JAMES WILLIAMS, No. 2:22-cv-2250 CKD P

12 Plaintiff, 13 v. ORDER 14 JOSHUA PRUDHEL, et al., 15 Defendants. 16 17 Plaintiff is a state
prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 18 1983. This proceeding
was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 19 636(b)(1). 20 Plaintiff
requests leave to proceed in forma pauperis. As plaintiff has submitted a 21 declaration that makes
the showing required by 28 U.S.C. § 1915(a), his request will be granted. 22 Plaintiff is required
to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 23 1914(a), 1915(b)(1). By
separate order, the court will direct the appropriate agency to collect the 24 initial partial filing fee
from plaintiff's trust account and forward it to the Clerk of the Court. 25 Thereafter, plaintiff will
be obligated for monthly payments of twenty percent of the preceding 26 month's income credited
to plaintiff's prison trust account. These payments will be forwarded by 27 the appropriate agency
to the Clerk of the Court each time the amount in plaintiff's account 28 exceeds \$10.00, until the
filing fee is paid in full. 28 U.S.C. § 1915(b)(2). 1 The court is required to screen complaints
brought by prisoners seeking relief against a 2 governmental entity or officer or employee of a
governmental entity. 28 U.S.C. § 1915A(a). The 3 court must dismiss a complaint or portion
thereof if the prisoner has raised claims that are legally 4 "frivolous or malicious," that fail to state
a claim upon which relief may be granted, or that seek 5 monetary relief from a defendant who is
immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). 6 A claim is legally frivolous when it lacks
an arguable basis either in law or in fact. 7 Neitzke v. Williams, 490 U.S. 319, 325 (1989);
Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th

8 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
10 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully 11
pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th

12 Cir. 1989); Franklin, 745 F.2d at 1227.

13 In order to avoid dismissal for failure to state a claim a complaint must contain more than 14
“naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
15 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words, 16
“[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 17
statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim 18
upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A 19
claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
20 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556
U.S. 21 at 678. When considering whether a complaint states a claim upon which relief can be
granted, 22 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94
(2007), and 23 construe the complaint in the light most favorable to the plaintiff, see Scheuer v.
Rhodes, 416 24 U.S. 232, 236 (1974). 25 The court has reviewed plaintiff’s complaint and finds
that it fails to state a claim upon 26 which relief can be granted under federal law. Plaintiff’s
complaint must be dismissed. The 27 court will, however, grant leave to file an amended
complaint. 28 // 1 If plaintiff chooses to amend the complaint, the amended complaint must be
legible. 2 Plaintiff’s handwriting in the original complaint is, at times, not legible. Also, plaintiff
must be 3 more clear as to his allegations, and not be repetitive. 4 Plaintiff must demonstrate how
the conditions complained of have resulted in a 5 deprivation of plaintiff’s constitutional rights.
See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). 6 Also, in his amended complaint, plaintiff must
allege in specific terms how each named defendant 7 is involved. There can be no liability under
42 U.S.C. § 1983 unless there is some affirmative 8 link or connection between a defendant’s
actions and the claimed deprivation. Rizzo v. Goode, 9 423 U.S. 362 (1976). Furthermore, vague
and conclusory allegations of official participation in 10 civil rights violations are not sufficient.
Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 11 1982). 12 Plaintiff asserts, among other
things, a violation of the Americans with Disabilities Act 13 (ADA). Plaintiff is informed that
Title II ADA “prohibit[s] discrimination on the basis of 14 disability,” Lovell v. Chandler, 303
F.3d 1039, 1052 (9th Cir. 2002), and applies to inmates 15 within state prisons. Pennsylvania
Dept. of Corrections v. Yeskey, 524 U.S. 206, 208 (1998). 16 “To establish a violation of Title II
of the ADA, a plaintiff must show that (1) [he] is a qualified 17 individual with a disability; (2)
[he] was excluded from participation in or otherwise 18 discriminated against with regard to a
public entity’s services, programs, or activities; and (3) 19 such exclusion or discrimination was
by reason of [his] disability.” Lovell, 303 F.3d at 1052. 20 “To recover monetary damages under
Title II of the ADA, a plaintiff must prove intentional 21 discrimination on the part of the
defendant,” and the standard for intentional discrimination is 22 deliberate indifference. Duvall v.
County of Kitsap, 260 F.3d 1124, 1138 (9th Cir. 2001). 23 Finally, plaintiff is informed that the
court cannot refer to a prior pleading in order to 24 make plaintiff’s amended complaint complete.
Local Rule 220 requires that an amended 25 complaint be complete in itself without reference to

any prior pleading. This is because, as a 26 general rule, an amended complaint supersedes the original complaint. See *Loux v. Rhay*, 375 27 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no 28 // 1 | longer serves any function in the case. Therefore, in an amended complaint, as in an original 2 || complaint, each claim and the involvement of each defendant must be sufficiently alleged. 3 In accordance with the above, IT IS HEREBY ORDERED that: 4 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted. 5 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees 6 || shall be collected and paid in accordance with this court's order to the Director of the California 7 || Department of Corrections and Rehabilitation filed concurrently herewith. 8 3. Plaintiff's complaint is dismissed. 9 4. Plaintiff is granted thirty days from the date of service of this order to file an amended 10 || complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil 11 || Procedure, and the Local Rules of Practice. The amended complaint must bear the docket 12 || number assigned this case and must be labeled "Amended Complaint." Failure to file an 13 || amended complaint in accordance with this order will result in a recommendation that this action 14 || be dismissed. 15 | Dated: March 3, 2023 / ae □□ / a Ly a

16 CAROLYN K DELANEY

17 UNITED STATES MAGISTRATE JUDGE

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