UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Marie Minichino v. Ruben Gutierrez, et al.

Minichino · No. 25-cv-09544-JCS · Decided December 16, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 MARIE MINICHINO, 7 Case No. 25-cv-09544-JCS Plaintiff, 8 v. ORDER TO SHOW CAUSE RE 9 DISMISSAL RUBEN GUTIERREZ, et al., 10 Defendants. 11 12 13 I. INTRODUCTION 14 Plaintiff Marie Minichino, pro se, applied to proceed in forma pauperis and the Court 15 granted her application. See Docket No. 6.

The Court now reviews the sufficiency of Plaintiff's 16 complaint to determine whether it satisfies 28 U.S.C. § 1915(e)(2)(B). Because the complaint 17 does not appear to plausibly state a claim, Plaintiff is ORDERED TO SHOW CAUSE why the 18 complaint should not be dismissed. Plaintiff may file either an amended complaint or a response 19 to this order addressing why her complaint is sufficient, no later than January 7, 2026.

The Case 20 Management Conference set for February 4, 2026 is vacated. 21 II. ALLEGATIONS OF THE COMPLAINT1 22 Plaintiff alleges that she is 72 years old and that defendant Ruben Gutierrez stole her 23 collection of foreign bonds and foreign currency, worth five million dollars, and moved them to 24 his residence, in Oakland, California. Dkt. No. 1 at ECF pp. 3, 6.

Plaintiff resides in Florida. Id. at 25 ECF p. 1. She has supplied an itemized list of the stolen bonds and currency, including the 26 1 Because the factual allegations of a plaintiff's complaint are generally taken as true in the context 27 of determining whether the complaint states a claim, this section summarizes Plaintiff's 1 purchase prices she paid for them, which appear to exceed $75,000 in total.

Id. at ECF p. 4. She 2 also alleges that the bonds "have matured and there is demand today from buyers." Id. at ECF p. 3 6. She names a second defendant, Cyrus Crafft, who is alleged to reside at the same address as 4 Gutierrez, but she alleges no facts as to that defendant. 5 Plaintiff asserts claims under the Elder Justice Act and the Senior Safe Act. Id. at ECF p. 6 4.

She asserts that there is federal jurisdiction based on both federal question and diversity 7 jurisdiction. Id. at ECF p. 2. 8 III. ANALYSIS 9 A. Legal Standards Under 28 U.S.C. § 1915 and Rule 12(b)(6) 10 Where a plaintiff is found to be indigent under 28 U.S.C. § 1915(a)(1) and is granted leave 11 to proceed in forma pauperis, courts must engage in screening and dismiss any claims which: 12 (1) are frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek 13 monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B); see 14 Marks v. Solcum, 98 F.3d 494, 495 (9th Cir. 1996). 15 To state a claim for relief, a plaintiff must make “a short and plain statement of the claim 16 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Further, a claim may be 17 dismissed for “failure to state a claim upon which relief can be granted.” Fed.

R. Civ. P. 12(b)(6); 18 see also Diaz v. Int’l Longshore and Warehouse Union, Local 13, 474 F.3d 1202, 1205 (9th Cir. 19 2007). In determining whether a plaintiff fails to state a claim, the court takes “all allegations of 20 material fact in the complaint as true and construe[s] them in the light most favorable to the non- 21 moving party.” Cedars-Sinai Med.

Ctr. v. Nat’l League of Postmasters of U.S., 497 F.3d 972, 975 22 (9th Cir. 2007). However, “the tenet that a court must accept a complaint’s allegations as true is 23 inapplicable to legal conclusions [and] mere conclusory statements,” Ashcroft v. Iqbal, 556 U.S. 24 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)), and courts “do not 25 necessarily assume the truth of legal conclusions merely because they are cast in the form of 26 factual allegations.” Coto Settlement v. Eisenberg, 593 F.3d 1031, 1034 (9th Cir.

2010) (internal 27 quotation marks omitted). The complaint need not contain “detailed factual allegations,” but must 1 Twombly, 550 U.S. at 570). 2 Where the complaint has been filed by a pro se plaintiff, courts must “construe the 3 pleadings liberally... to afford the petitioner the benefit of any doubt.” Hebbe v. Pliler, 627 F.3d 4 338, 342 (9th Cir. 2010). “A pro se litigant must be given leave to amend his or her complaint 5 unless it is absolutely clear that the deficiencies in the complaint could not be cured by 6 amendment.” Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir.

1987), superseded on other grounds 7 by statute, as recognized in Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000) (en banc). Further, 8 when it dismisses the complaint of a pro se litigant with leave to amend, “the district court must 9 provide the litigant with notice of the deficiencies in his complaint in order to ensure that the 10 litigant uses the opportunity to amend effectively.” Id. (quoting Ferdik v. Bonzelet, 963 F.2d 11 1258, 1261 (9th Cir.

1992)). “Without the benefit of a statement of deficiencies, the pro se litigant 12 will likely repeat previous errors.” Karim-Panahi v. L.A. Police Dep’t, 839 F.2d 621, 624 (9th 13 Cir. 1988) (quoting Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). 14 B. Discussion 15 Plaintiff has asserted two federal claims in this case: one under the Elder Abuse and 16 Extortion Act (42 U.S.C. § 3058i) and another under the Elder Justice Act of 2009 (42 U.S.C. § 17 1397j).

However, neither of these statutes confers a private right of action. Wister v. White, No. 18 19-CV-05882-WHO, 2019 WL 6841370, at *3 (N.D. Cal. Dec. 16, 2019); see also Sienze v. 19 Madera Cty. Sheriff's Office, No. 1:17-CV-00736-AWI-SAB, 2017 WL 2423672, at *7 (E.D. Cal.

20 June 5, 2017) (holding that Congress “did not intend to create a private right of action” under the 21 Elder Abuse and Extortion Act, so plaintiff did not have a federal cause of action for elder abuse); 22 Drayton-Smith v. Wright, No. 4:15-CV-1952 (CEJ), 2016 WL 2643357, at *2 (E.D.

Mo. May 10, 23 2016) (holding that the Elder Justice Act of 2009 “do[es] not provide a private cause of action and 24 thus do[es] not provide a basis for federal-question jurisdiction”). Therefore, Plaintiff has not 25 stated any viable claims. 2 26 27 2 The Court finds that Plaintiff has colorably alleged the existence of diversity jurisdiction because 1 IV.

CONCLUSION 2 For the reasons discussed above, Plaintiff is ORDERED TO SHOW CAUSE why this case 3 should not be dismissed. Plaintiff may respond by filing either an amended complaint that 4 || addresses the deficiencies discussed above or a response that addresses why her current complaint 5 || is sufficient. Plaintiff's response shall be filed by January 7, 2026.

If Plaintiff does not file a 6 || response by that date, the case will be reassigned to a United States district judge with a 7 recommendation that it be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). 8 Any amended complaint must include the caption and civil case number used in this order 9 and the words FIRST AMENDED COMPLAINT on the first page.

Because an amended 10 || complaint completely replaces the previous complaint, any amended complaint may not 11 incorporate claims or allegations of Plaintiff’s original complaint by reference, but instead must 12 || include all of the facts and claims Plaintiff wishes to present and all of the defendants he wishes to 5 13 sue. 14 Plaintiff, who is not represented by counsel, is encouraged to consult with the Federal Pro 3 15 || Bono Project’s Legal Help Center.

Appointments, which may be conducted in-person or 16 || remotely, can be made by calling (415) 782-8982 or emailing federalprobonoproject @ sfbar.org. 3 17 Lawyers at the Legal Help Center can provide basic assistance to parties representing themselves 18 || but cannot provide legal representation. 19 IT IS SO ORDERED. 20 21 Dated: December 16, 2025 J PH C. SPERO 23 nited States Magistrate Judge 24 25 26 27 28