

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Dontague Bush v. CPLC Nevada

Case No. 2:26-cv-00117-CDS-NJK; Docket No. 1 · No. Case No. 2:26-cv-00117-CDS-NJK; Docket No. 1 ·
Decided January 23, 2026

SUMMARY

The United States District Court for the District of Nevada grants Dontague Bush leave to proceed in forma pauperis. The court screens the complaint under 28 U.S.C. § 1915(e) and dismisses the FMLA interference claim with leave to amend because the complaint does not allege that Bush gave his employer sufficient notice of the medical or family-related reasons for his absences. The court also notes that the complaint is unsigned and may present additional timeliness and exhaustion issues, and sets a deadline for amendment.

CASE DETAILS

COURT	United States District Court for the District of Nevada
WRITING FOR THE COURT	Nancy J. Koppe
JURISDICTION	United States District Court for the District of Nevada
DECIDED	January 23, 2026
DOCKET	Case No. 2:26-cv-00117-CDS-NJK; Docket No. 1
DISPOSITION	other
PROCEDURAL POSTURE	Pro se plaintiff sought leave to proceed in forma pauperis. After granting that application, the court screened the complaint under 28 U.S.C. § 1915(e)(2) and Rule 12(b)(6), dismissed the complaint for failure to state an FMLA-interference claim, and granted leave to amend.
STANDARD OF REVIEW	The court applied the Rule 12(b)(6) plausibility standard and the screening standard under 28 U.S.C. § 1915(e)(2), accepting well-pleaded factual allegations as true but disregarding legal conclusions and conclusory recitations of the elements.
PRECEDENTIAL VALUE	nonprecedential trial-court order

TOPICS

- family and medical leave act
- motions to dismiss
- pleadings
- civil procedure
- employment law

PRACTICE AREAS

civil procedure

employment law

family and medical leave act

QUESTIONS PRESENTED

1. Whether the plaintiff qualified to proceed in forma pauperis under 28 U.S.C. § 1915(a).
2. Whether the complaint stated a prima facie claim for FMLA interference under the applicable pleading and screening standards.
3. Whether dismissal should be with leave to amend.

HOLDINGS

1. Plaintiff's application to proceed in forma pauperis was granted because he demonstrated an inability to prepay fees and costs or provide security.
2. The complaint failed to state a claim for FMLA interference because it did not allege that plaintiff provided his employer with notice of the medical or family circumstances underlying his absences.
3. The complaint was dismissed with leave to amend because the court did not conclude that the deficiencies could not be cured by amendment.

KEY QUOTATIONS

"To make out a prima facie case of FMLA interference, an employee must allege that "(1) he was eligible for the FMLA's protections, (2) his employer was covered by the FMLA, (3) he was entitled to leave under the FMLA, (4) he provided sufficient notice of his intent to take leave, and (5) his employer denied him FMLA benefits to which he was entitled." (at 3)

"the critical test for substantively-sufficient notice is whether the information that the employee conveyed to the employer was reasonably adequate to apprise the employer of the employee's request to take leave for a serious health condition that rendered him unable to perform his job." (at 3)

FACTUAL BACKGROUND

Plaintiff alleged that he failed to appear for work for several days and was terminated because of those absences. He attributed the absences to medical and family-related reasons but did not allege that he notified his employer of those circumstances or requested FMLA leave. The complaint also appeared to be unsigned.

PROCEDURAL HISTORY

Plaintiff filed an application to proceed in forma pauperis and a complaint alleging that his employer terminated him after several no-show absences that were related to medical and family circumstances. The court found that the application satisfied the requirements of 28 U.S.C. § 1915(a), granted it, and directed the Clerk to file the complaint. On screening, the court dismissed the complaint with leave to amend by February 13, 2026, warning that failure to amend would result in recommended dismissal.

DISPOSITION

other

CASES CITED

- Cato v. United States, 70 F.3d 1103, 1106 (9th Cir.)
- Chappel v. Lab. Corp. of Am., 232 F.3d 719, 723 (9th Cir.)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Papasan v. Allain, 478 U.S. 265, 286 (1986)
- Hebbe v. Pliler, 627 F.3d 338, 342 & n.7 (9th Cir.)
- Sanders v. City of Newport, 657 F.3d 772, 778 (9th Cir.)
- Munger v. Cascade Steel Rolling Mills, Inc., 544 F. Supp. 3d 1078, 1089 (D. Or.)
- Liu v. Amway Corp., 347 F.3d 1125, 1134-35 (9th Cir.)

OPINION

Bush

PER CURIAM.

1 2

3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 6 Dontague Bush, Case No. 2:26-cv-00117-CDS-NJK 7 Plaintiff(s), ORDER 8 v. [Docket No. 1]
9 CPLC Nevada, 10 Defendant(s). 11 Plaintiff is proceeding in this action pro se and has requested
authority pursuant to 12 28 U.S.C. § 1915 to proceed in forma pauperis. 13 I. In Forma Pauperis
Application 14 Plaintiff filed an affidavit required by § 1915(a). See Docket No. 1. Plaintiff has
shown 15 an inability to prepay fees and costs or give security for them. Accordingly, Plaintiff's
application 16 to proceed in forma pauperis will be granted pursuant to 28 U.S.C. § 1915(a). The
Clerk's Office 17 is further INSTRUCTED to file the complaint (Docket No. 1-1) on the docket.
18 II. Screening the Complaint 19 Upon granting an application to proceed in forma pauperis,
courts additionally screen the 20 complaint pursuant to § 1915(e).¹ Federal courts are given the
authority to dismiss a case if the 21 action is legally "frivolous or malicious," fails to state a claim
upon which relief may be granted, 22 or seeks monetary relief from a defendant who is immune
from such relief. 28 U.S.C. § 1915(e)(2). 23 When a court dismisses a complaint under § 1915, the
plaintiff should be given leave to amend the 24 complaint with directions as to curing its
deficiencies, unless it is clear from the face of the 25 complaint that the deficiencies could not be
cured by amendment. See Cato v. United States, 70 26 F.3d 1103, 1106 (9th Cir. 1995). 27 1
Plaintiff's most recent pleading is set forth through a motion for leave to amend. Docket
28 No. 10. The Court addresses that motion vis-à-vis the screening procedures that apply to this
case.

1 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
2 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is 3
essentially a ruling on a question of law. See *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 4
(9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim 5
showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. 6*
Twombly, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,
7 it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a
cause 8 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S.
265, 9 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
10 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at
679. 11 Mere recitals of the elements of a cause of action, supported only by conclusory
allegations, do 12 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not
crossed the line from 13 conceivable to plausible, the complaint should be dismissed. *Twombly*,
550 U.S. at 570. 14 Allegations of a pro se complaint are held to less stringent standards than
formal pleadings drafted 15 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010)
(finding that liberal 16 construction of pro se pleadings is required after *Twombly* and *Iqbal*). 17
To make out a prima facie case of FMLA interference, an employee must allege that “(1) 18 he
was eligible for the FMLA’s protections, (2) his employer was covered by the FMLA, (3) he 19
was entitled to leave under the FMLA, (4) he provided sufficient notice of his intent to take leave,
20 and (5) his employer denied him FMLA benefits to which he was entitled.” *Sanders v. City of*
21 *Newport*, 657 F.3d 772, 778 (9th Cir.2011). As to the fourth requirement, “the critical test for
22 substantively-sufficient notice is whether the information that the employee conveyed to the 23
employer was reasonably adequate to apprise the employer of the employee’s request to take leave
24 for a serious health condition that rendered him unable to perform his job.” *Munger v. Cascade*
25 *Steel Rolling Mills, Inc.*, 544 F. Supp. 3d 1078, 1089 (D. Or. 2021) (collecting cases, quotations
26 and citation omitted). Only after that notice is given by the employee must an employer inquire
27 further into the circumstances. See *id.*; see also, e.g., *Liu v. Amway Corp.*, 347 F.3d 1125,
1134- 28 35 (9th Cir. 2003). 1 The complaint fails to state a claim for FMLA interference. The
complaint alleges that 2 Plaintiff no-showed at work for several days, at which time he was
terminated for that reason. 3 Docket No. 1-1 at 4. Although Plaintiff alleges that he failed to
appear for work for medical and 4 family-related reasons, the complaint does not allege that
Plaintiff provided his employer with any 5 notice of those circumstances. Instead, the complaint
alleges that the employer failed to discern 6 whether the unexplained absences could have been
covered by FMLA. See *id.* To make out a 7 prima facie case, however, the plaintiff must allege
that he provided notice. 8 For the reason discussed above, the complaint fails to state a claim for
FMLA interference.² 9 Although it appears Plaintiff may have difficulty stating a claim in this
case, the Court will provide 10 leave to amend. 11 III. Conclusion 12 Accordingly, IT IS
ORDERED that: 13 1. Plaintiff’s application to proceed in forma pauperis (Docket No. 1) is

GRANTED. 14 Plaintiff shall not be required to pay the filing fee. Plaintiff is permitted to maintain 15 this action to conclusion without the necessity of prepayment of any additional fees or 16 costs or the giving of a security therefor. This order granting leave to proceed in forma 17 pauperis shall not extend to the issuance and/or service of subpoenas at government 18 expense. 19 2. The Clerk's Office is INSTRUCTED to file the complaint (Docket No. 1-1) on the 20 docket. 21 3. Plaintiff's complaint is DISMISSED with leave to amend. Plaintiff will have until 22 February 13, 2026, to file an amended complaint, if the noted deficiencies can be 23 corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed that the 24 Court cannot refer to a prior pleading (i.e., the original complaint) in order to make the 25 26 2 The complaint is also deficient in that it is not signed. See Docket No. 1-1 at 7; but see Fed. R. Civ. P. 11(a). In addition, there appear to be potential hurdles to moving forward apart 27 from the notice issue, including as to untimeliness and exhaustion of administrative remedies. Because Plaintiff has not stated a prima facie case, however, the Court need not address these other 28 issues now.] amended complaint complete. This is because, as a general rule, an amended complaint 2 supersedes the original complaint. Local Rule 15-1(a) requires that an amended 3 complaint be complete in itself without reference to any prior pleading. Once a plaintiff 4 files an amended complaint, the original complaint no longer serves any function in the 5 case. Therefore, in an amended complaint, as in an original complaint, each claim and 6 the involvement of each Defendant must be sufficiently alleged. 7 4. Failure to file an amended complaint by the deadline set above will result in the 8 recommended dismissal of this case. 9 IT IS SO ORDERED. 10 Dated: January 23, 2026 > Nancy J. ap pe 12 United States Magistrate Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28