

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

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