

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Benjamin Robert Gallegos v. California Department of Corrections
and Rehabilitation, et al.**

No. 2:22-cv-01790-DAD-EFB (PC) (E.D. Cal. Mar. 10, 2023) · No. 2:22-cv-01790-DAD-EFB (PC) · Decided
March 10, 2023

OPINION

(PC) Gallegos v. CDCR

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 BENJAMIN ROBERT GALLEGOS, No. 2:22-cv-01790-DAD-EFB (PC)

12 Plaintiff, 13 v. ORDER

14 CALIFORNIA DEPARTMENT OF

CORRECTIONS AND

15 REHABILITATION, et al., 16 Defendants. 17 18 Plaintiff is a state prisoner proceeding
without counsel in an action brought under 42 19 U.S.C. § 1983. After dismissal of the original
complaint pursuant to 28 U.S.C. § 1915A, plaintiff 20 has filed an amended complaint, which the
court must screen.¹ 21 Screening Order 22 Plaintiff’s amended complaint alleges that he has been
denied the right to marry for no 23 legitimate reason. ECF No. 14 at 3. While most of the
allegations are too vague and conclusory 24 to establish a violation of this right, the complaint
does set forth sufficient detail to state a 25 1 Federal courts must engage in a preliminary
screening of cases in which prisoners seek redress from a governmental entity or officer or
employee of a governmental entity. 28 U.S.C. 26 § 1915A(a). The court must identify cognizable
claims or dismiss the complaint, or any portion 27 of the complaint, if the complaint “is frivolous,
malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief
from a defendant who is immune from such 28 relief.” Id. § 1915A(b). 1 potentially cognizable
claim against defendant Ebert. According to plaintiff, a judge has issued 2 an order allowing him a
day pass in order to marry his fiancé. Id. at 8. As best the court can tell, 3 plaintiff and his fiancé
made it the Solano County courthouse to be married, but were turned away 4 by the clerk. Id. at 4.
The Clerk informed plaintiff that his paperwork could not be processed 5 because defendant Ebert,
a correctional counselor at the California Medical Facility, did not sign 6 it. Id. Plaintiff alleges
that defendant Ebert did so deliberately so as to deny plaintiff his right to 7 marry. Id. As relief,

plaintiff seeks monetary damages and an order allowing him to be married.

8 Id. at 5. Liberally construed, plaintiff alleges a potential violation of his Fourteenth Amendment
9 right to marry. See *Turner v. Safley*, 482 U.S. 78, 95 (1987) (prisoners retain the right to marry,
10 “subject to substantial restrictions as a result of incarceration”). 11 The amended complaint
includes allegations that defendant Rojas improperly processed 12 plaintiff’s administrative
appeals regarding plaintiff’s efforts to be married. ECF No. 14 at 4. 13 These allegations cannot
survive screening because any failure to properly process or respond to 14 an administrative
appeal does not violate due process, as there are no constitutional requirements 15 regarding how
a grievance system is operated. See *Ramirez v. Galaza*, 334 F.3d 850, 860 (9th
16 Cir. 2003). If plaintiff wishes to pursue a claim that Rojas also violated his Fourteenth
17 Amendment right to marry, plaintiff must more clearly allege so in an amended complaint. 18
The amended complaint also suggests that unspecified individuals have interfered with 19
plaintiff’s right to marry in retaliation for his fiancé’s conduct as a whistleblower. ECF No. 14 at
20 4, 7. Apparently, plaintiff’s fiancé was at some point employed as a psychiatric technician at
the 21 California Health Care Facility and reported unspecified wrongs committed against
plaintiff. Id. 22 at 7. These allegations are not sufficient to establish a claim of retaliation in
violation of the First 23 Amendment. “Within the prison context, a viable claim of First
Amendment retaliation entails 24 five basic elements: (1) An assertion that a state actor took some
adverse action against an inmate 25 (2) because of (3) that prisoner’s protected conduct, and that
such action (4) chilled the inmate’s 26 exercise of his First Amendment rights, and (5) the action
did not reasonably advance a legitimate 27 correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559,
567-68 (9th Cir. 2005). The most glaring 28 // 1 deficiency here is that the alleged protected
conduct is that of plaintiff’s fiancé, and not of 2 plaintiff himself. 3 None of the remaining
allegations show that any named defendant personally participated 4 in denying plaintiff the right
to remarry or otherwise violated his federal statutory or 5 constitutional rights. Thus, plaintiff may
either proceed with the Fourteenth Amendment right to 6 marry claim against defendant Ebert
only or he may amend his complaint to cure the deficiencies 7 identified herein. He may not,
however, change the nature of this suit by alleging new, unrelated 8 claims. *George v. Smith*, 507
F.3d 605, 607 (7th Cir. 2007). Plaintiff is not obligated to amend 9 his complaint. 10 Leave to
Amend 11 Plaintiff may file an amended complaint to attempt to cure the deficiencies noted
above. 12 Any amended complaint must identify as a defendant only persons who personally
participated in 13 a substantial way in depriving him of a federal constitutional right. *Johnson v.*
Duffy, 588 F.2d 14 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
constitutional right if 15 he does an act, participates in another’s act or omits to perform an act he
is legally required to do 16 that causes the alleged deprivation). 17 Any amended complaint must
be written or typed so that it so that it is complete in itself 18 without reference to any earlier filed
complaint. E.D. Cal. L.R. 220. This is because an amended 19 complaint supersedes any earlier
filed complaint, and once an amended complaint is filed, the 20 earlier filed complaint no longer

serves any function in the case. See *Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)). Plaintiff is also instructed that any amended complaint must contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a). The court cautions plaintiff that failure to comply with the Federal Rules of Civil Procedure, this court’s Local Rules, or any court order may result in this action being dismissed. See Local Rule 110. 1 Conclusion 2 Accordingly, it is ORDERED that: 3 1. Plaintiff’s amended complaint (ECF No. 14) alleges, for screening purposes, a 4 potentially cognizable Fourteenth Amendment right to marry claim against defendant 5 Ebert. 6 2. All other claims (including those against all defendants other than Ebert)’ are 7 dismissed with leave to amend within 30 days of service of this order. Plaintiff not 8 obligated to amend his complaint. 9 3. Within thirty days plaintiff shall return the notice below advising the court whether he 10 elects to proceed with the cognizable claim or file an amended complaint. If the 11 former option is selected and returned, the court will enter an order directing service at 12 that time. 13 4. Failure to comply with any part of this order may result in dismissal of this action. 14 15 | Dated: March 10, 2023. tid

EDMUND F. BRENNAN

16 UNITED STATES MAGISTRATE JUDGE

17 18 19 20 21 22 23 24 25 26 27 ? The defendants are not clearly captioned in the complaint but appear to include Ebert, the State of California, CDCR, CMF, Warden Cuevas, Vasquez, CSP-Sac, Meadows, and Rojas. 28 || See ECF No. 14 at 1, 2. 1 2 3 4

5 UNITED STATES DISTRICT COURT

6 FOR THE EASTERN DISTRICT OF CALIFORNIA

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8 BENJAMIN ROBERT GALLEGOS, No. 2:22-cv-01790-DAD-EFB (PC)

9 Plaintiff,

10 v. NOTICE

11 CALIFORNIA DEPARTMENT OF

CORRECTIONS AND

12 REHABILITATION, et al., 13 Defendants. 14 15 In accordance with the court’s Screening Order, plaintiff hereby elects to: 16 17 (1) _____ proceed only with the Fourteenth Amendment right to marry claim against 18 defendant Ebert; 19 20 OR 21 22 (2) _____ delay serving any defendant and file an amended complaint. 23 24 _____ 25 Plaintiff 26 Dated: 27 28