

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Diaz v. Osman

Diaz v. Osman · No. 2:23-cv-1449-DAD-JDP (P) · Decided April 18, 2025

OPINION

(PC) Diaz v. Osman

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 MIGUEL ENRIQUE DIAZ, Case No. 2:23-cv-1449-DAD-JDP (P) 12 Plaintiff, 13 v.
ORDER 14 M. OSMAN, et al., 15 Defendants. 16 17 18 Plaintiff has filed an amended complaint,
ECF No. 29, and three applications to proceed in 19 forma pauperis, ECF Nos. 31, 32, & 35. He
is, however, a “three-striker” within the meaning of

20 Title 28 U.S.C. § 1915(g). Plaintiff has had at least three cases dismissed for failure to state a
21 claim upon which relief can be granted: (1) Diaz v. Diaz, et al., No. 1:13-cv-0453-SKO (E.D.
Cal.

22 Jul. 28, 2014) at ECF No. 29; (2) Diaz v. Vasquez, et al., No. 1:12-cv-0732-SAB (E.D. Cal.
Feb.

23 25, 2013) at ECF No. 23; (3) Diaz v. Diaz, No. 1:12-cv-1296-AWI-SAB (E.D. Cal. Sept. 4,
2014) 24 at ECF No. 41. 25 Plaintiff might still be eligible to proceed in forma pauperis if his
complaint made a 26 showing of imminent physical danger, but it does not. He alleges that
“wound care” for his foot 27 in June through August 2023 was inadequate. ECF No. 29 at 3-5.
The specifics, however, are 28 1 difficult to understand. Separately, plaintiff alleges that he has
been denied incontinence supplies 2 in retaliation for filing grievances. Id. at 6-7. The only
connection between these separate 3 medical claims is the allegation that the lack of incontinence
supplies raises the risk of infecting 4 the wound on his foot. Id. at 7. In another unrelated claim
stemming from events in May 2024, 5 plaintiff alleges that his provision of food and insulin was
being delayed and sometimes denied.

6 Id. at 8. Finally, plaintiff alleges that, during July 2024, he was not offered any ice for the heat.

7 Id. Plaintiff is advised that he may not bring separate and unrelated claims against multiple 8
defendants. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). 9 Additionally, none of the
foregoing claims are connected to an allegation of imminent 10 physical danger. Plaintiff
references imminent physical danger in a separate filing, ECF No. 32, 11 wherein he argues that
the allegations in his complaint make the showing. I decline to consider 12 pleadings outside the

complaint, however, in weighing whether to allow plaintiff to proceed 13 despite his status as a three-striker. 14 I will dismiss the immediate complaint with leave to amend. Plaintiff should use the 15 district's complaint form that will be sent to him with this order. He is advised that any amended 16 complaint will supersede its predecessors and, thus, must be complete in itself. Plaintiff may not 17 refer to other filings in his complaint for the purpose of bolstering his allegations. If the amended 18 complaint fails to make the showing of imminent danger, I will recommend that plaintiff's most 19 recent application to proceed in forma pauperis, ECF No. 35, be denied.1 I will deny his other 20 applications to proceed in forma pauperis, ECF Nos. 31 & 32, as duplicative and his motion for 21 extension of time to file an application, ECF No. 34, as unnecessary. 22 Accordingly, it is ORDERED that: 23 1. Plaintiff's first amended complaint, ECF No. 29, is DISMISSED with leave to amend. 24 2. Within thirty days from service of this order, plaintiff shall file either (1) an amended 25 complaint or (2) notice of voluntary dismissal of this action without prejudice. 26 27 28 1 I will defer ruling on this application for now. 1 3. Failure to timely file either an amended complaint or notice of voluntary dismissal may 2 | result in the imposition of sanctions, including a recommendation that this action be dismissed 3 | with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 4 4. The Clerk of Court shall send plaintiff a complaint form with this order. 5 5. Plaintiff's applications to proceed in forma pauperis, ECF Nos. 31 & 32, are DENIED 6 | as duplicative, and his motion for extension of time, ECF No. 34, is DENIED as unnecessary. 7 g IT IS SO ORDERED. Dated: _ April 17, 2025 q

10 JEREMY D. PETERSON

i UNITED STATES MAGISTRATE JUDGE

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