

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Mark Anthony Mall v. Adrienne Marie Waibel, et al.

Mall · No. CV-25-04693-PHX-JJT · Decided January 5, 2026

SUMMARY

The United States District Court for the District of Arizona dismissed pro se Plaintiff Mark Anthony Mall’s Second Amended Complaint without leave to amend. The court held that Plaintiff failed to adequately allege that the defendants acted under color of state law for purposes of 42 U.S.C. § 1983 and that his quiet-title and declaratory-judgment claims did not independently establish federal-question jurisdiction.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	John J. Tuchi
JURISDICTION	United States District Court for the District of Arizona
DECIDED	January 5, 2026
DOCKET	CV-25-04693-PHX-JJT
DISPOSITION	dismissed
PROCEDURAL POSTURE	The court screened Plaintiff's pro se Second Amended Complaint under 28 U.S.C. § 1915(e)(2) and dismissed it for failure to state a federal claim and failure to establish federal-question subject-matter jurisdiction.
STANDARD OF REVIEW	The court screened the in forma pauperis complaint under 28 U.S.C. § 1915(e)(2), applying the Rule 12(b)(6) standard and independently considering subject-matter jurisdiction. A pro se complaint was construed liberally, but liberal construction could not supply essential elements not pleaded.
PRECEDENTIAL VALUE	unknown
PARTIES	Mark Anthony Mall v. Adrienne Marie Waibel, et al.

TOPICS

- section 1983
- subject matter jurisdiction
- motions to dismiss
- quiet title
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

real estate

QUESTIONS PRESENTED

1. Whether the Second Amended Complaint adequately alleged that Defendants were state actors or acted under color of state law for purposes of 42 U.S.C. § 1983.
2. Whether Plaintiff's quiet-title and declaratory-judgment claims created an independent federal cause of action or conferred federal-question subject-matter jurisdiction.
3. Whether the Second Amended Complaint should be dismissed without leave to amend after Plaintiff had already received two opportunities to amend.

HOLDINGS

1. The Second Amended Complaint failed to state a § 1983 claim because it did not sufficiently allege that Defendants were state actors or acted under color of state law.
2. The quiet-title and declaratory-judgment claims did not create an independent cause of action under federal law or confer subject-matter jurisdiction on the district court.
3. Dismissal without leave to amend was proper because Plaintiff had twice been given an opportunity to amend and could not state a federal claim for which relief could be granted.

KEY QUOTATIONS

“Plaintiff fails to sufficiently state that the Defendants were either a state actor or acted under the color of state law, his Section 1983 claim fails.” (Opinion at 2)

“Plaintiff has not, and cannot, state a federal claim against Defendants for which relief can be granted in this Court, and therefore cannot establish federal question subject-matter jurisdiction.” (Opinion at 3)

FACTUAL BACKGROUND

Mall alleged that Wells Fargo and Tiffany & Bosco foreclosed his property, that EZ Homes subsequently acquired title, and that EZ Homes later transferred title to the defendants. He alleged that the defendants' property interests resulted from those prior actions and that the defendants relied on actions by the Maricopa County Recorder's Office, the Superior Court, and the Sheriff's Office to obtain and maintain possession. The court found no facts showing that the defendants participated in foreclosure proceedings, recorded the allegedly void documents, or exercised power possessed by virtue of state law.

PROCEDURAL HISTORY

Mall filed a Second Amended Complaint asserting claims under 42 U.S.C. § 1983, quiet title, and declaratory judgment arising from the foreclosure and subsequent transfers of his property. The court had previously provided two opportunities to amend, including opportunities to establish subject-matter jurisdiction and state a claim. The court dismissed the Second Amended Complaint without leave to amend and directed the Clerk to dismiss the matter.

DISPOSITION

dismissed

CASES CITED

- Lopez v. Smith, 203 F.3d 1122, 1127-29, 1130 (9th Cir. 2000)
- Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990)
- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Bruns v. National Credit Union Administration, 122 F.3d 1251, 1257 (9th Cir. 1997)
- Henderson ex rel. Henderson v. Shinseki, 562 U.S. 428, 434 (2011)
- Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 (1978)
- Polk County v. Dodson, 454 U.S. 312, 317-18 (1981)
- Rawson v. Recovery Innovations, Inc., 975 F.3d 742, 751 (9th Cir. 2020)

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF ARIZONA 8 9 Mark Anthony Mall, No. CV-25-04693-PHX-JJT 10 Plaintiff, ORDER 11 v. 12 Adrienne Marie Waibel, et al., 13 Defendants. 14 15 At issue is pro se Plaintiff Mark Anthony Mall's Second Amended Complaint 16 (Doc. 17, SAC).

For the reasons set forth below, the Court dismisses the Second Amended 17 Complaint without leave to amend. 18 I. LEGAL STANDARD 19 For cases like this one in which a party is permitted to proceed IFP, 28 U.S.C. 20 § 1915(e)(2) provides that a district court must screen that party's complaint for, among other 21 things, whether the complaint states a claim for which relief may be granted.

Lopez v. Smith, 22 203 F.3d 1122, 1127–29 (9th Cir. 2000). A dismissal under Rule 12(b)(6) for failure to state 23 a claim can be based on either (1) the lack of a cognizable legal theory or (2) insufficient 24 facts to support a cognizable legal claim. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 25 699 (9th Cir. 1990).

The Court is to construe a pro se plaintiff's complaint "liberally" and 26 afford the plaintiff "the benefit of any doubt." Watison v. Carter, 668 F.3d 1108, 1112 (9th 27 Cir. 2012) (citation omitted). However, "a liberal interpretation of a civil rights complaint 28 1 may not supply essential elements of the claim that were not initially pled." Bruns v. Nat'l 2 Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir.

1997) (citation omitted). 3 In addition to screening IFP complaints under Section 1915, "[f]ederal courts have an 4 independent obligation to ensure that they do not exceed the scope of their jurisdiction, and 5 therefore they must raise and decide jurisdictional questions that the parties

either overlook 6 or elect not to press.” *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011).

7 “If the court determines at any time that it lacks subject-matter jurisdiction, the court must 8 dismiss the action.” Fed. R. Civ. P. 12(h)(3). The plaintiff bears the burden of establishing 9 the court’s jurisdiction over his claims.

As here, the plaintiff may assert that the defendants 10 violated the Constitution, a federal law, or treaty of the United States, i.e., the court’s “federal 11 question” jurisdiction. See 28 U.S.C. § 1331. 12 II. ANALYSIS 13 Plaintiff asserts that the Court has federal question subject-matter jurisdiction because 14 he asserts a claim under 42 U.S.C. § 1983.

(SAC ¶ 1.) As recounted in the Court’s previous 15 Order (Doc. 16), a Section 1983 claim requires that a plaintiff has “been deprived of a right 16 secured by the Constitution and the laws of the United States” and that the defendant 17 “deprived them of this right acting under color of any statute of the State.” *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978) (citation modified).

A private person “acts under color 19 of state law only when exercising power possessed by virtue of state law and made possible 20 only because the wrongdoer is clothed with the authority of state law.” *Polk County v. 21 Dodson*, 454 U.S. 312, 317–18 (1981) (citation modified); see also *Rawson v. Recovery 22 Innovations, Inc.*, 975 F.3d 742, 751 (9th Cir. 2020).

23 Plaintiff alleges that Wells Fargo and Tiffany & Bosco foreclosed Plaintiff’s property, 24 and EZ Homes acquired title of the foreclosed property thereafter. (*Id.* ¶¶ 21–27.) EZ Homes 25 then transferred title to Defendants years after the alleged foreclosure took place. (*Id.* ¶ 26.) 26 Plaintiff alleges that Defendants’ property interest exists because of the actions of Wells 27 Fargo, Tiffany & Bosco and EZ Homes.

(*Id.* ¶ 32.) The only “state actors” that played a role 28 were the Maricopa County Recorder’s Office, which recorded the foreclosure and title 1 || documents, the Superior Court, which initiated an eviction action, and the Sheriff’s Office, 2|| which enforced the foreclosure judgment. (dd. § 29.) According to Plaintiff, Defendants 3|| “relied” upon these state actions “to obtain and maintain possession of the Property.” □□□□ 33.)

Plaintiff alleges that Defendants acted “under color of state law through joint 5 || engagement with state actors” (*id.* 4 31) but alleges no facts suggesting that Defendants 6 || participated in any of the foreclosure proceedings, recorded the purportedly void documents, 7|| or otherwise exercised any power possessed by virtue of state law or were clothed with state 8 || law authority.

Polk County, 454 U.S. at 317-18. Because Plaintiff fails to sufficiently state || that the Defendants were either a state actor or acted under the color of state law, his Section 1983 claim fails. The

only other claims Plaintiff brings are for “quiet title” and “declaratory judgment” arising under federal law. (SAC §§ 35-39.)

The Court already determined that neither of those claims create an independent cause of action nor confer subject-matter jurisdiction upon this Court. (Doc. 12.) That same determination applies here. Plaintiff has twice been given an opportunity to amend his pleadings, once to establish subject-matter jurisdiction and the other to state a claim upon which relief can be granted.

Plaintiff has not, and cannot, state a federal claim against Defendants for which relief can be granted in this Court, and therefore cannot establish federal question subject-matter jurisdiction.’ Accordingly, the Court will dismiss the Second Amended Complaint without leave to amend. See *Lopez*, 203 F.3d at 1130. IT IS ORDERED dismissing Plaintiff’s Second Amended Complaint (Doc.

17) without leave to amend. The Clerk of Court shall dismiss this matter without further notice. Dated this 5th day of January, 2026. CN 23 “wok: 74 wefehlee— United States District Judge 25 26 27) 1 Even if Plaintiff stated that the Court had diversity jurisdiction, Plaintiff does not assert, 28 nor does this Court find, the requisite citizenship of the parties or the amount in controversy.

See 28 U.S.C. § 1332(a)(1). -3-