



(PC)Carr v. Alcala et al

2015 | Cited 0 times | E.D. California | February 19, 2015

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

CLAUDE CARR,

Plaintiff, vs. M. ALCALA, et al.,

Defendants

Case No. 1:14 cv 01823 LJO GSA PC

ORDER DISMISSING FIRST AMENDED COMPLAINT AND GRANTING PLAINTIFF LEAVE
TO FILE A SECOND AMENDED COMPLAINT

AMENDED COMPLAINT DUE IN THIRTY DAYS

I. Screening Requirement Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are , or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § paid, the court shall dismiss the case at any time if the court determines that . . . the action or

1915(e)(2)(B)(ii). 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 R.

Swierkiewicz

liberal pleading standard . . . applies only to a plaintiff Neitze v. Williams,

Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir.



(PC)Carr v. Alcala et al

2015 | Cited 0 times | E.D. California | February 19, 2015

1982)). II. This action proceeds on the December 17, 2014, first amended complaint. Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR) at CSP Corcoran, brings this civil rights action against defendant correctional officials employed by the CDCR at CSP Corcoran. Plaintiff names as Defendants Mailroom Supervisor M. Alcala; Correctional Counselor J. Sasso; Associate Warden J. Collins. Plaintiff claims that he was denied access to the courts in violation of the First Amendment and that Defendants subjected him to an equal protection deprivation in violation of the Fourteenth Amendment. Plaintiff alleges that on May 15, 2014, he mailed a civil rights complaint to the U.S. District Court for the Central District of California. As of July 6, 2014, Plaintiff had not received any confirmation that the complaint had been received or filed. On July 9, 2014, the court confirmed that it had not received a complaint. Plaintiff filed an inmate grievance, and was interviewed at the first level of review by cond level of review by

Defendant Sasso. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

A. Access to Courts

Because states must ensure indigent prisoners meaningful access to the courts, prison officials are required to provide either (1) adequate law libraries, or (2) adequate assistance from persons trained in the law. *Bounds v. Smith*, 430 U.S. 817, 828 (1977). Under prior law, *Bounds* of the *Bounds* minima need not allege actual injury to a state constitutional claim. *Sands v. Lewis*, 886 F.2d 1166, 1171 (9 th

Cir. 1989). Recent Supreme Court precedent abolishes such approach, however, providing that all inmate claims for interference with access to the court *Casey v. Lewis*, 518 U.S. 343 (1996). To establish a *Bounds* assistance program frustrated or impeded his ability to pursue a nonfrivolous legal claim. *Casey*, supra, 518 U.S. 343, 347. The right *Casey* court further limits the right of access to the courts, as follows:

Finally, we must observe that the injury requirement is not satisfied by just any type of frustrated legal claim . . . *Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration. *Casey*, 518 U.S. at 346. Liberally construed, Plaintiff has alleged facts indicating that he suffered actual injury the facts alleged indicate that Plaintiff was prevented from filing a civil rights complaint suggesting that Alcala or any of the Defendants were responsible for the complaint not reaching 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

the court. Under section 1983, Plaintiff must link the named defendants to the participation in the violation at issue. *Ashcroft v. Iqbal*, 556 U.S. 662, 676-77 (2009); *Simmons v. Navajo County, Ariz.*, 609



(PC)Carr v. Alcala et al

2015 | Cited 0 times | E.D. California | February 19, 2015

F.3d 1011, 1020-21 (9 th

Cir. 2010). Liability may not be imposed under a theory of respondeat superior, and there must exist some causal connection between the conduct of each named defendant and the violation at issue. Iqbal, 556 U.S. at 676-77; Lemire v. , 726 F.3d 1062, 1074-75 (9 th

Cir. 2013); Starr v. Baca, 652 F.3d 1202, 1205-08 (9 th

Cir. 2011), cert. denied, 132 S.Ct. 2101 (2012). Plaintiff may not, therefore, hold Defendant Alcala liable simply because he is the mailroom supervisor. B. Equal Protection

The Equal Protection Clause requires that persons who are similarly situated be treated alike. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985); Shakur v. Schiriro, 514 F.3d 878, 891 (9 th

Cir. 2008). A plaintiff may establish an equal protection claim membership in a protected class. Comm. Concerning Cmty. Improvement v. City of Modesto,

583 F.3d 960, 702-03 (9 th

Cir. 2009); Serrano v. Francis, 345 F.3d 1071, 1082 (9 th

Cir. 2003), or that similarly situated individuals were intentionally treated differently without a rational relationship to a legitimate state purpose, Engquist v. Oregon Dept. of Agr., 553 U.S. 591, 601- 02 (2008); Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9 th

Cir. 2008); North Pacifica LLC v. City of Pacifica, 526 F.3d 478, 486 (9 th

Cir. 2008). Plaintiff has not alleged any facts suggesting that he was intentionally discriminated against based upon his membership in a protected class or that similarly situated individuals were intentionally treated differently without a rational relationship to a legitimate state purpose. This claim should therefore be dismissed.

C. Grievance Process The only conduct charged to Defendants is their participation in the inmate grievance process. There is no liberty interest in a prison grievance procedure as it is a procedural right 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

only. Mann v. Adams, 855 F.2d 639, 640 (9 th

Cir. 1988); Buckley v. Barlow, 997 F.2d 494, 495 (8 th



(PC)Carr v. Alcala et al

2015 | Cited 0 times | E.D. California | February 19, 2015

Cir. 1993). The prison grievance procedure does not confer any substantive rights upon inmates and actions in reviewing appeals cannot serve as a basis for liability under section 1983. Buckley, 997 F.2d at 495. Defendants cannot, therefore be held liable solely for denying

III. Conclusion and Order first amended complaint and finds that it does not state any claims upon which relief may be granted under section 1983. The Court will provide Plaintiff with the opportunity to file an amended complaint curing the deficiencies identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not change the nature of this suit by adding new, unrelated claims in his amended complaint. George Plaintiff need not, however, set forth legal arguments in support of his claims. In order to hold an individual defendant liable, Plaintiff must name the individual defendant, describe where that defendant is employed and in what capacity, and explain how that defendant acted under color of state law. Plaintiff should state clearly, in his own words, what happened. Plaintiff must describe what each defendant, by name, did to violate the particular right described by Plaintiff.

each named defe

rights, Hydrick, 500 F.3d at 987- be [sufficient] to raise a right to relief above the speculative level . . Bell Atlantic Corp. v.

Twombly, 550 U.S. 544, 554 (2007) (citations omitted).

Finally, Plaintiff is advised that an amended complaint supercedes the original complaint, Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, - 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

original complaint which are not alleged in an amen King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

Accordingly, based on the foregoing, it is HEREBY ORDERED that: 1. first amended complaint is dismissed, with leave to amend, for failure

to state a claim; 2. 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file a second amended complaint; 4. Plaintiff may not add any new, unrelated claims to this action via his amended

complaint and any attempt to do so will result in an order striking the amended complaint; and 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this

action be dismissed, with prejudice, for failure to state a claim.



(PC)Carr v. Alcala et al

2015 | Cited 0 times | E.D. California | February 19, 2015

IT IS SO ORDERED. Dated: February 18, 2015 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE

