



**(PS) Galindo v. Goehrig et al**

2024 | Cited 0 times | E.D. California | April 22, 2024

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD ANTONIO GALINDO,

Plaintiff, v. GREGORY P GOEHRIG, et al.,

Defendants.

No. 2:23-cv-2348 DJC DB PS

ORDER

Plaintiff Donald Antonio Galindo is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Pending before the court are plaintiff's complaint and motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1 & 2.) The complaint alleges that plaintiff did not receive wages earned. The court is required to screen complaints brought by parties proceeding in forma pauperis. See 28 U.S.C. § 1915(e)(2); see also *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Here, plaintiff's complaint is deficient. Accordingly, for the reasons stated below, plaintiff's complaint will be dismissed with leave to amend. I. Plaintiff's Application to Proceed In Forma Pauperis Plaintiff's in forma pauperis application makes the financial showing required by 28 U.S.C. § 1915(a)(1). However, a determination that a plaintiff qualifies financially for in forma pauperis status does not complete the inquiry required by the statute. "A district court may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit." *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998) (quoting *Tripodi v. First Nat. Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also *McGee v. Department of Child Support Services*, 584 Fed. Appx. 638 (9th Cir. 2014) ("the district court did not abuse its discretion by denying McGee's request to proceed IFP because it appears from the face of the amended complaint that McGee's action is frivolous or without merit"); *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) ("It is the duty of the District Court to examine any application for leave to proceed in forma pauperis to determine whether the proposed proceeding has merit and if it appears that the proceeding is without merit, the court is bound to deny a motion seeking leave to proceed in forma pauperis."). Moreover, the court must dismiss an in forma pauperis case at any time if the allegation of poverty is found to be untrue or if it is determined that the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. See 28 U.S.C.



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§ 1915(e)(2). A complaint is legally frivolous when it lacks an arguable basis in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984). Under this standard, a court must dismiss a complaint as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327; 28 U.S.C. § 1915(e). To state a claim on which relief may be granted, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In considering whether a complaint states a cognizable claim, the court accepts as true the material allegations in the complaint and construes the allegations in the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Hosp. Bldg. Co. v. Trustees of Rex Hosp.*, 425 U.S. 738, 740 (1976); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, the court need not accept as true /// conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

The minimum requirements for a civil complaint in federal court are as follows:

A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the grounds upon which the court’s jurisdiction depends . . . , (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Fed. R. Civ. P. 8(a). II. Plaintiff’s Complaint Here, plaintiff’s complaint fails to contain a short and plain statement of a claim showing that plaintiff is entitled to relief. In this regard, plaintiff’s complaint is handwritten and difficult to read. However, it appears to allege that the various named defendants “for ced” plaintiff to work from November of 2018 until April of 2020, without paying plaintiff the correct wages. (Compl. (ECF No. 1) at 4.) According to the complaint plaintiff “didn’t receive a penny from anyone until 18 months into the work.” ( *Id.* at 5.) However, the complaint does not allege specific facts with respect to a defendant or a claim. Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a complaint must give the defendant fair notice of the plaintiff’s claims and must allege facts that state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further factual enhancements.’” *Ashcroft v. Iqbal*, 556 U.S.662, 678 (2009) (quoting *Twombly* , 550 U.S. at 555, 557). A plaintiff must allege with at least some degree of particularity overt acts which the defendants engaged in that support the plaintiff’s claims. *Jones*, 733 F.2d at 649. Plaintiff is advised that the Fair Labor Standards Act (“FLSA”) and the California Labor Code require the payment of wages earned. See generally *Landers v. Quality Communications, Inc.*, 771 F.3d 638, 640 (9th Cir. 2014); Cal. Lab. Code § 203. “ An employee seeking to recover unpaid minimum wages or overtime under the FLSA has the burden of proving that he performed work for which he was not properly compensated.” *Brock v. Seto*, 790 F.2d 1446, 1447-48 (9th Cir. 1986). Under the FLSA an “employer” includes “ any person acting directly or indirectly in the interest of an employer in relation to an employee.” 29



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U.S.C. § 203(d). There is a “two-year limitations period for most FLSA claims and a three-year period for claims arising out of willful violation of the statute.” *Huss v. City of Huntington Beach*, 317 F.Supp.2d 1151, 1160 (C.D. Cal. 2000). II. Leave to Amend For the reasons stated above, plaintiff’s complaint must be dismissed. The undersigned has carefully considered whether plaintiff may amend the complaint to state a claim upon which relief can be granted. “Valid reasons for denying leave to amend include undue delay, bad faith, prejudice, and futility.” *California Architectural Bldg. Prod. v. Franciscan Ceramics*, 818 F.2d 1466, 1472 (9th Cir. 1988); see also *Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court does not have to allow futile amendments).

However, when evaluating the failure to state a claim, the complaint of a pro se plaintiff may be dismissed “only where ‘it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984) (quoting *Haines v. Kerner*, 404 U.S. 519, 521 (1972)); see also *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) (“Dismissal of a pro se complaint without leave to amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.”) (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1203-04 (9th Cir. 1988)). Here, the undersigned cannot yet say that it appears beyond doubt that leave to amend would be futile. Plaintiff’s complaint will therefore be dismissed, and plaintiff will be granted leave to file an amended complaint. Plaintiff is cautioned, however, that if plaintiff elects to file an amended complaint “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft*, 556 U.S. at 678. “While legal conclusions can provide the complaint’s framework, they must be supported by factual allegations.” *Id.* at 679. Those facts must be sufficient to push the claims “across the line from conceivable to plausible[.]” *Id.* at 680 (quoting *Twombly*, 550 U.S. at 557). Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an amended complaint complete. Local Rule 220 requires that any amended complaint be complete in itself without reference to prior pleadings. The amended complaint will supersede the original complaint. See *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in an amended complaint, just as if it were the initial complaint filed in the case, each defendant must be listed in the caption and identified in the body of the complaint, and each claim and the involvement of each defendant must be sufficiently alleged. Any amended complaint which plaintiff may elect to file must also include concise but complete factual allegations describing the conduct and events which underlie plaintiff’s claims.

**CONCLUSION** Accordingly, IT IS HEREBY ORDERED that: 1. The complaint filed October 16, 2023 (ECF No. 1) is dismissed with leave to amend. 2. Within twenty-eight days from the date of this order, an amended complaint shall be filed that cures the defects noted in this order and complies with the Federal Rules of Civil Procedure and the Local Rules of Practice. 1

The amended complaint must bear the case number assigned to this action and must be titled “Amended Complaint.” 3. Failure to comply with this order in a timely manner may result in a



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recommendation that this action be dismissed. DATED: April 19, 2024 /s/ DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

1 Alternatively, if plaintiff no longer wishes to pursue this action plaintiff may file a notice of voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.

