



Spitters v. Spitters, Sr. et al

2023 | Cited 0 times | N.D. California | December 15, 2023

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

THOMAS HEATON SPITTERS,

Plaintiff, v. LAURENCE L. SPITTERS, SR., et al.,

Defendants.

Case No. 23-cv-06094-TSH

S APPLICATION TO PROCEED IN FORMA PAUPERIS AND SCREENING COMPLAINT
PURSUANT TO 28 U.S.C. § 1915(E)

I. INTRODUCTION Plaintiff Thomas Heaton Spitters, proceeding pro se, filed a complaint and application to proceed in forma pauperis. ECF Nos. 1, 2. application with leave to amend because he did not provide his income, ECF No. 4, but he has now filed a clarifying statement, ECF No. 5. For the reasons stated below, the Court GRANTS the application but finds the complaint deficient under 28 U.S.C. § 1915(e). No later than January 16, 2024, Plaintiff must file a first amended complaint curing the deficiencies identified in this screening order. If Plaintiff fails to cure these deficiencies, the case will be reassigned to a district judge with a recommendation for dismissal.

II. BACKGROUND Plaintiff brings this form complaint against Laurence Spitters, Sr. and John Laurence Spitters. In the Jurisdiction section, Plaintiff states this case belongs in federal court based on diversity jurisdiction. Compl. at 2. In the Claims section, Plaintiff alleges Defendants violated Id. ing Id. Plaintiff also includes an exhibit, in which he alleges:

The criminal and tortious activities of the Defendants in this case, and of their proxies include and included, but are not limited to inciting public drunkenness, pressuring others to ingest contaminated food, smashing borrowed automobiles, slander, illegally changing vital records and documents, illegally obtaining confidential records and documents, home invasion and property damage, burglary, Invasion of privacy and violation of right to privacy. Illegal substitution of cash theft, automobile theft, property theft, assault, tampering, using social engineering techniques in the spread of the narcotics trade, prostitution, deliberate misinformation and fraud, and other unlawful acts. The Defendants in virtually all instances pretended to be doing administrative work when committing their hateful, malevolent, malicious, unlawful acts. Some investigation should be made as



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to how the unlawful acts of the Defendants in this case were paid for or sponsored, financed, the resulting payoffs and the related source of funds. *Id.* tating on or about 1975 up to the present time. This filing is to bring the unlawful and tortious acts of the Defendants to the light of day, and to initiate proceedings in order to compel redress in the amount of \$ 10 million U.S. for the wrongful condu *Id.*

III. IN FORMA PAUPERIS APPLICATION A district court may authorize the start of a civil action in forma pauperis if the court is satisfied the would-be plaintiff cannot pay the filling fees required to pursue the lawsuit. See 28 U.S.C. § 1915(a)(1). Based on the information provided in his application, the Court was initially unable to determine whether Plaintiff was entitled to proceed in forma pauperis. Specifically, when asked if presently employed, Plaintiff answered yes, but he then stated that his The Court denied his application without prejudice and ordered him to either (1) file an amended application to proceed in forma pauperis that includes his gross and net income or (2) pay the filing fee. ECF No. 4. In response, Plaintiff filed a letter stating he

and addicted viciously to various substances and chemicals at various times). Derivative of this, . . . Plaintiff clarification, the Court finds Plaintiff has submitted the required documentation demonstrating an inability to pay the costs of this action, and it is evident from the application that the listed assets and income are insufficient to enable payment of the fees. Accordingly, the Court GRANTS the application to proceed in forma pauperis.

IV. SUA SPONTE SCREENING UNDER 28 U.S.C. § 1915(e)(2) A. Legal Standard

A court must dismiss an in forma pauperis complaint before service of process if it is frivolous, fails to state a claim, or contains a complete defense to the action on its face. 28 U.S.C. § 1915(e)(2). Section 1915(e)(2) parallels the language of Federal Rule of Civil Procedure 12(b)(6) regarding dismissals for failure to state a claim. See *id.*; see also *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000). As such, the complaint must allege facts that plausibly See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007).

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

A complaint must also comply with Federal Rule of Civil Procedure 8, which requires the

. P. 8(a)(2). The failure to comply with Rule 8 is a basis for dismissal that is not dependent on whether the complaint is without merit. *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996). Accordingly, even claims which are not on their face subject to dismissal under Rule 12(b)(6) may still be dismissed for violating Rule 8(a). *Id.*

As Plaintiff is proceeding without representation by a lawyer, the Court must construe the complaint liberally. See *Garaux v. Pulley*, 739 F.2d 437, 439 (9th Cir. 1984). However, it may not add to the factual



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allegations in the complaint. See *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). Litigants unrepresented by a lawyer remain bound by the Federal Rules and Local Rules of this District. See N.D. Cal. Civ. L.R. 3-9(a). B. Application

Federal Subject Matter Jurisdiction Federal courts are courts of limited jurisdiction. See *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). As such, they re that they Henderson ex rel. Henderson v. Shinseki, 562 U.S. 428, 434 (2011); *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004) (noting that onte whether [they] have subject matter Federal courts are presumptively without jurisdiction over civil cases and the burden of establishing the contrary rests upon the party asserting jurisdiction. *Kokkonen*, 511 U.S. at 377.

There are two bases for federal subject matter jurisdiction: (1) federal question jurisdiction under 28 U.S.C. § 1331 and (2) diversity jurisdiction under 28 U.S.C. § 1332. A district court has nstitution, laws, or treaties of Id. at § 1331. - *Hansen v. Blue Cross of Cal.*, 891 F.2d 1384, 1386 (9th Cir. 1989). controversy exceeds the sum or value of \$75,000 . . . and is between citizens of different states, or Id.

Here, Plaintiff alleges the Court has diversity jurisdiction, yet he also alleges he and at least one of the defendants reside in California. Compl. at 2. As such, the Court lacks diversity jurisdiction.

As to federal question jurisdiction, it is unclear what claims Plaintiff seeks to bring. Plaintiff bring claims under Title 18, that Title deals with federal crimes and criminal procedure. It is well-

Redmond v. United States, 2022 WL 1304472, at *3 (N.D. Cal. May 2, 2022) (collecting cases); see also *Aldabe v. Aldabe*, 616 F.2d 1089, file criminal charges in the United States District Court. Rather, criminal proceedings in federal court are initiated by the Candy-Anh-Thu:Tran v. Daniel, 2017 WL 6513414, at *2 (N.D. Cal. Dec. 20, 2017) (citing

Harbor v. Kim criminal proceedings lies within the discretion of the proper state or federal prosecuting

see also *United States v. Nixon*, 418 U.S. 683, 693 (1974) (observing that the o prosecute a s standing to bring claims under Title 18. See *Aldabe*, 616 F.2d at 1092. If Plaintiff believes that the defendants engaged in criminal conduct, he must contact federal law enforcement or the United States Att that belief to them.

To the extent Plaintiff seeks to bring claims under Title 15 of the United States Code, that Title encompasses a wide range of laws related to commerce and trade, including antitrust laws, consumer protection, and various regulatory provisions. Many sections of Title 15 outline regulatory frameworks and standards without explicitly authorizing private lawsuits, instead leaving enforcement to government agencies, such as the Federal Trade Commission or the Department of Justice. s complaint does not tie any of alleged misconduct to any particular provision of law.



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Plaintiff also appears to allege Defendants violated his Fourth Amendment rights, but he brings this claim against private actors i.e., persons who are not government or state actors. *George v.*

Pac.-CSC Work Furlough, 91 F.3d 1227, 1229 (9th Cir. 1996) (per curiam) (citations omitted); see also *United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (explaining that the Fourth Amendment tal action; it is wholly inapplicable to a search or seizure, even an (cleaned up) *Florer v.*

Congregation Pidyon Shevuym, N.A., 639 F.3d 916, 922 (9th Cir. 2011). As such, without allegations demonstrating how and why he may properly assert his constitutional claims against these defendants, Plaintiff has not shown the Court has subject matter jurisdiction based on a federal question.

Accordingly, Plaintiff must file an amended complaint that clarifies how this Court has subject matter jurisdiction over his claims.

Rule 8 complaint also does not comply with Federal Rule of Civil Procedure 8.

whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996). To comply with Rule 8, a complaint need not provide detailed factual allegations, but provide *Twombly*, 550 U.S. at 555 (internal citations and quotations omitted). A plaintiff must do *Id.* Rather, the plaintiff must provide *Id.* at 570; see also *Coleman v. Beard* rules require brevity in pleading, a complaint nevertheless must be sufficient to give the *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)).

specific laws or rights he thinks they violated, and a putative defendant would not know how to respond. Thus, t Plaintiff must amend the complaint to allege: (1) the specific laws or rights he thinks Defendants violated; (2) for each law or right, state the specific factual allegations that connect each defendant with the alleged wrongdoing, including dates, the names of people involved, and what those people did to him; and (3) how he was harmed.

Frivolousness Finally, it appears at least portions of are *Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). Frivolous claims are *Id.* at 32. When determining whether to

usually is when making a determination based solely on the pleadings, to accept without question

Denton, 504 U.S. at 32 (quoting *Neitzke*, 490 U.S. at 327).

Plaintiff alleges

the narcotics trade, prostitution, deliberate misinformation and frau



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because the court finds the p Denton, 504 U.S. at 33. However, as

is entirely without merit . . . [A] person with a measured legitimate claim may cross the line into

Molski v. Evergreen Dynasty Corp., 500 F.3d 1047, 1060 such a nature and, as currently plead, are subject to dismissal.

V. CONCLUSION For the reasons above, the Court GRANTS the application to proceed in forma pauperis but finds the complaint fails to state a claim pursuant to 28 U.S.C. § 1915(e). However, given the pro se status of Plaintiff, and because it is not clear that the deficiencies of the complaint could not be cured by amendment, the Court shall grant Plaintiff the opportunity to file an amended complaint. Accordingly, the Court ORDERS Plaintiff to file an amended complaint by January 16, 2024. A. REQUIREMENTS FOR AMENDED COMPLAINT

Because an amended complaint replaces the previous complaint, it may not incorporate claims or allegations in the original complaint by reference. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Instead, any amendment must include all of the facts and claims to be presented and all of the defendants that are to be sued. In addition, any amended complaint must include the following sections:

Caption Page On the first page, list the names of the defendant(s), the case number used in this order (23-cv-06094-TSH), the title FIRST AMENDED COMPLAINT case to be heard by a jury. **Form of Pleadings** The factual allegations and claims must be written in numbered paragraphs, each limited as far as practicable to a single set of circumstances. **Subject Matter Jurisdiction** The first numbered paragraph in your complaint (labeled explain why this Court has the power to decide this kind of case. A federal court can hear a case based on a federal question jurisdiction (a violation of federal law under 28 U.S.C. § 1331) or diversity jurisdiction (when all plaintiffs and all defendants are citizens of different states disputing more than \$75,000) under 28 U.S.C. § 1332. **Parties** In separate paragraphs for each party, identify the plaintiff(s) and defendant(s) in the case. **Statement of Facts** Explain the important facts in your case in numbered paragraphs, describing how the defendant(s) violated the law and how you have been injured. **Claims** Include a separate heading for each legal claim (Claim 1, Claim 2, etc.), identifying the specific law that you think the defendant(s) violated and explaining in numbered paragraphs what each defendant did to violate each law.

B. RESOURCES

Plaintiff may wish to seek assistance from the Legal Help Center, a free service offered by the Justice & Diversity Center of the Bar Association of San Francisco. You may request an appointment by emailing fedpro@sfbar.org or calling 415-782-8982. At the Legal Help Center, you will be able to speak with an attorney who may be able to provide basic legal help but not representation. More information is available at <http://cand.uscourts.gov/helpcentersf>.



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Plaintiff may also wish to obtain a copy of this District Handbook for Litigants Without a Lawyer, which provides instructions on how to proceed at every stage of your case. The handbook <http://cand.uscourts.gov/prosehandbook>.

IT IS SO ORDERED.

Dated: December 15, 2023

THOMAS S. HIXSON United States Magistrate Judge

