No. 18-7493

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

HAYWARD JACKSON,

Petitioner,

v.

PEOPLE READY, INC.; STEPHANIE VANEGAS; WALESKA STANFORD; RAQUEL MADRIGAL; and DAVID MONTEZ,

Respondent.

Case No.: 9th Cir. 17-56831
(U. S. D. C., C. D. Cal. No. 5:17-cv-0143-FMO (JPR) (C. D. Cal. 2017))

PETITION FOR WRIT OF CERTIORARI.

On Petition for Writ of Certiorari from the Judgment
Of the United States Court of Appeals
For the Ninth Circuit.

HAYWARD JACKSON
P. O. Box 705
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Petitioner in Pro Se

QUESTIONS PRESENTED.

Was the Ninth Circuit in conflict with this Court's Decisions in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), and *Conley v. Gibson,* 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), when Petitioner properly pleaded his Second Amended Complaint?

CORPORATE DISCLOSURE STATEMENT.

None of the Parties hold any stock in any corporation.

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CITATIONS.

The Judgment was granted against Petitioner in the case of *Jackson v. People Ready, Inc.* (2018), dated October 15, 2018.

STATEMENT OF JURISDICTION.

The Judgment was granted against Petitioner in the case of *Jackson v. People Ready, Inc.* (2018), dated October 15, 2018. This Court has jurisdiction pursuant to 28 U. S. C., §1254(1).

STATUTORY PROVISIONS.

United States Constitution, Fifth, and Fourteenth Amendments , and 42 U. S. C., §§1981, 1985(2) and (3), and 1986 (Apx. 25a-26a).

STATEMENT OF FACTS.

Petitioner was employed as a temporary employee at what was then known as Labor Ready by filling out an employment application, and providing identification. Petitioner does not remember filling a contract, but employment was an at-will basis, subject to public policy (Dist. Ct. Dock. No. 12, 3:21-24).

Previous to the drug tests in Labor Ready's Offices in San Bernardino and Upland, Petitioner was an employee in good standing at Labor Ready (Dist. Ct. Dock. No. 12, 3:25-26).

Labor Ready requires drug testing periodically, because it hires temporary employees for light industrial work. Agencies, like Labor Ready do drug testing to cut down on worker compensation claims in the event the employee is high on drugs while injured at work (Dist. Ct. Dock. No. 12, 4:1-4).

Prior to working at the Upland office, when Petitioner was given temporary jobs at the San Manuel Indian Bingo & Casino, he was ordered drug tested each Wednesday night before that work assignment each time and passed (Dist. Ct. Dock. No. 12, 4:5-7).

On or about April 30, 2015, Petitioner was assigned to Labor Ready's office in Upland. Petitioner was taken to the job site by another temporary employee (who smoked marijuana that day) assigned by the Upland Labor Ready. Respondent Vanegas at the Upland Labor Ready required Petitioner and the temporary employee who took Petitioner to the job site that day to take a drug test, and falsely stated that he failed. Petitioner, days later, took the very similar drug test at the San Bernardino Labor Ready, like the test they use at all Labor Ready Offices, and ***he passed.*** (Dist. Ct. Dock. No. 12, 4:8-15).

The reason why Labor Ready falsely stated that he failed a drug test, because Petitioner and other employees heard that Respondent Waleska Stanford said that she did not like African-Americans, because on Respondent Stanford used to live in the "Little Africa" neighborhood of San Bernardino and felt harassed by African-Americans. The Upland Labor Ready, and Respondents Stanford, Vanegas, and Madrigal set the drug test to fail, because they did not want Petitioner to work there because of his race (Dist. Ct. Dock. No. 12, 4:16-22).

Petitioner was wrongfully terminated because of his race. Even though he "failed" the drug test in the Upland Office, a reason why Labor Ready terminated Petitioner, but passed it in the San Bernardino Office, Labor Ready and the other Respondents did not want Petitioner to work at any Labor Ready because of his race (Dist. Ct. Dock. No. 12, 4:23-5:2).

STATEMENT OF THE CASE.

On January 26, 2017, Petitioner filed his Original Complaint (Dist. Ct. Dock. No. 1).

On June 28, 2017, Petitioner filed his Second Amended Complaint (Dist. Ct. Dock. No. 12).

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On July 14, 2017, Respondents filed their Motion to Dismiss (Dist. Ct. Dock. No. 13). Respondents claimed that Petitioner did not properly plead that Respondents violated 42 U.S.C., §1981 (Dist. Ct. Dock. No. 13 Memorandum, 6:14-8:20), and that Petitioner did not properly plead that Respondents violated 42 U.S.C., §§1985(3), and 1986 (Dist. Ct. Dock. No. 13 Memorandum, 8:21-9:20)

On August 3, 2017, Petitioner filed his Opposition to the Motion to Dismiss (Dist. Ct. Dock. No. 16) in which Petitioner argued that he properly pleaded his Complaint under the notice pleading standard (Dist. Ct. Dock. No. 16, 1:17-4:22).

On August 11, 2017, Respondents filed their Reply to the Opposition to the Motion to Dismiss (Dist. Ct. Dock. No. 17).

On September 22, 2017, the Magistrate Judge issued her Report and Recommendation (Apx. 4a-20a).

On October 12, 2017, Petitioner filed his Objections to the Report and Recommendation (Dist. Ct. Dock. No. 21), stating that Petitioner only needed to plead notice pleading (Dist. Ct. Dock. No. 21, 3:2-6:9).

On October 26, 2017, Respondents filed their Reply to the Objections (Dist. Ct. Dock. No. 22).

On December 8, 2016, the District Judge adopted the findings of the Report and Recommendation (Apx. 21a-22a).

Also on November 7, 2017, the District Court entered Judgment against Petitioner (Apx. 23a).

On December 5, 2017, Petitioner filed a timely Notice of Appeal (Dist. Ct. Dock. No. 26).

On March 8, 2018, Petitioner filed his Opening Brief (Ninth Cir. Dock. No. 4).

On March 9, 2018, the U. S. Equal Opportunity Commission filed its *Amicus Curiae* Brief (Ninth Cir. Dock. No. 7).

On May 3, 2018, Respondents filed their Appellees' Brief (Ninth Cir. Dock. No. 19).

On June 13, 2018, Petitioner filed his Reply Brief (Ninth Cir. Dock. No. 25).

On October 15, 2018, the Ninth Circuit affirmed the District Court (Apx. 1a-3a).

On November 30, 2018, Petitioner filed a Motion to Recall the Mandate (Ninth Cir. Dock. No. 33).

On December 13, 2018, the Ninth Circuit denied the Motion to Recall the Mandate (Apx. 24a).

REASONS FOR GRANTING THE WRIT.

I. PETITIONER IS NOT REQUIRED TO SPECIFICALLY PLEAD ALLEGATIONS IN SUPPORT OF HIS FEDERAL CAUSES OF ACTION.

Petitioner filed his lawsuit against Respondents, because of his false termination that was instigated by the individual Respondents, partially because Respondent Stanford felt falsely threatened by Blacks, because of her experience in living in the "Little Africa" section of San Bernardino. If Petitioner "failed" his drug test in the Upland Office of Labor Ready, but passed the same drug test in the San Bernardino Office of Labor Ready, that means that the drug tests are inconsistent, and instead of the District Court ignoring the inconsistent drug tests, the District Court should have inferred that the Respondents had a motive to terminate Petitioner.

The case of *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), as explained by the late Hon. William H. Rehnquist, Chief Justice of the United States, in a unanimous opinion that:

> "***We think that it is impossible to square the 'heightened pleading standard' applied by the Fifth Circuit in this case with the liberal system of 'notice pleading' set up by the Federal Rules.*** Rule

8(a)(2) requires that a complaint include only 'a short and plain statement of the claim showing that the pleader is entitled to relief.' In *Conley v. Gibson,* 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), we said in effect that the Rule meant what it said:

> "'***[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim.*** To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.' Id., at 47, 78 S.Ct., at 103 (footnote omitted).

"Rule 9(b) does impose a particularity requirement in two specific instances. It provides that '[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.' Thus, the Federal Rules do address in Rule 9(b) the question of the need for greater particularity in pleading certain actions, but do not include among the enumerated actions any reference to complaints alleging municipal liability under § 1983. *Expressio unius est exclusio alterius.*" (Emphasis added.)

The case of *Mendiondo v. Centinela Hospital Medical Center,* -- F.3d --, 2008 WL 852186, at 3, 4 (9th Cir. 2008), also states that:

> "The parties dispute whether a FCA retaliation claim must meet the notice pleading standard in Rule 8(a) or the heightened pleading standard in Rule 9(b). Rule 8(a) requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). Rule 8(a) applies to all civil claims except those containing averments of 'fraud or mistake,' which must be pleaded with particularity under Rule 9(b). Fed.R.Civ.P. 8, 9. The Supreme Court has narrowly construed Rule 9(b) to apply only to the types of actions enumerated in the rule-those alleging fraud or mistake-and has not extended the heightened pleading standard to other legal theories. See *Swierkiewicz v. Sorema N.A.,* 534 U.S. 506, 513, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (declining to apply Rule 9(b) to claims for violations of 42 U.S.C. §1983 or employment discrimination claims).

"...

"Where, as here, the heightened pleading standard of Rule 9(b) does not apply, the complaint 'need only satisfy the Rule 8(a) notice pleading standard ... to survive a Rule 12(b)(6) dismissal.' *Edwards v. Marin Park, Inc.,* 356 F.3d 1058, 1062 (9th Cir. 2004). The complaint need not contain detailed factual allegations, but it must provide more than 'a formulaic recitation of the elements of a cause of action.' *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929 (2007). Under Rule 8(a), the plaintiff must 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Id.* at 1964 (internal citation and quotation marks omitted). Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. *Balistreri v. Pacifica Police Dep't.,* 901 F.2d 696, 699 (9th Cir.1990)."

The case of *Johnson v. City of Shelby,* http://www.supremecourt.gov/opinions/14pdf/13-1318_3f14.pdf, at pp. 1-2 (2014), explains that:

"We summarily reverse. Federal pleading rules call for 'a short and plain statement of the claim showing that the pleader is entitled to relief,' Fed. Rule Civ. Proc. 8(a)(2); they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted. See Advisory Committee Report of October 1955, reprinted in 12A C. Wright, A. Miller, M. Kane, R. Marcus, and A. Steinman, Federal Practice and Procedure, p. 644 (2014 ed.) (Federal Rules of Civil Procedure 'are designed to discourage battles over mere form of statement'); 5 C. Wright & A. Miller, §1215, p. 172 (3d ed. 2002) (Rule 8(a)(2) 'indicates that a basic objective of the rules is to avoid civil cases turning on technicalities'). In particular, no heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke §1983 expressly in order to state a claim. See *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U. S. 163, 164 (1993) (a federal court may not apply a standard 'more stringent than the usual pleading requirements of Rule 8(a)' in 'civil

> rights cases alleging municipal liability'); *Swierkiewicz v. Sorema N. A.*, 534 U. S. 506, 512 (2002) (imposing a 'heightened pleading standard in employment discrimination cases conflicts with Federal Rule of Civil Procedure 8(a)(2)').

Petitioner does not have to plead his evidence, the entire Bible, or the complete works of Shakespeare. Again, Petitioner was suing the Respondents for being falsely terminated because of race. No heightened pleading standard applies to claims brought under the Federal statutes Petitioner has pleaded in his Complaint.

> "To quote the Ninth Circuit in *Alter*, '[t]he [plaintiff] does not have to plead and prove his entire case to establish standing and to trigger the government's responsibility to affirm or deny.' Contrary to defendants' assertions, proof of plaintiffs' claims is not necessary at this stage."

Al-Haramain Islamic Fdn. v. Bush, 595 F. Supp.2d 1077, 1085 (N.D. Cal. 2009) (quoting *United States v. Alter*, 482 F.2d 1016, 26 (9th Cir. 1973)) (alterations in original).

There is nothing that requires Petitioner to tell every minute detail of his claims, unless this Court wants to know what Petitioner did at work at every scintilla. The facts stated in the Complaint below supports the Federal Causes of Action.

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CONCLUSION.

Petitioner requests that the Judgment be reversed with Costs to Petitioner.

Dated this 11th day of January, 2019

By: Hayward Jackson

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