

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

FEB 26 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LAURACK D. BRAY,

Plaintiff - Appellant,

v.

MATTHEW SCOTT KENEFICK
Esquire, Attorney, individually and as
partner in Jeffers Mangels; et al.,

Defendants - Appellees.

No. 24-7622

D.C. No. 2:24-cv-08640-FMO-AJR
Central District of California,
Los Angeles

ORDER

Before: CANBY, M. SMITH, and FORREST, Circuit Judges.

After considering the response to the court's January 8, 2025 order, we deny the motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous. *See* 28 U.S.C. § 1915(a), (e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

APPX A

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Laurack D. Bray, <p align="center">v.</p> <p align="center">PLAINTIFF(S)</p>	CASE NUMBER 2:24-cv-08640-FMO-AJR
Matthew S. Kenefick, et al., <p align="center">DEFENDANT(S)</p>	<p align="center">ORDER ON REQUEST TO PROCEED IN FORMA PAUPERIS (NON-PRISONER CASE)</p>

The Court has reviewed the Request to Proceed *In Forma Pauperis* (the "Request") and the documents submitted with it. On the question of indigency, the Court finds that the party who filed the Request:

- is not able to pay the filing fees. is able to pay the filing fees.
- has not submitted enough information for the Court to tell if the filer is able to pay the filing fees. This is what is missing: Plaintiff failed to explain with particularity why his monthly expenses exceeds his monthly income by \$1,070. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015) ("[A] plaintiff seeking IFP status must allege poverty with some particularity, definiteness and certainty."); see also *Salat v. Wilson*, 2017 WL 4269958, at *3 (D. Nev. Sept. 26, 2017) ("Despite both IFP applications representing that Plaintiff regularly spends each month more than he receives in disability payments, he provides no explanation for the discrepancy.").

IT IS THEREFORE ORDERED that:

- The Request is GRANTED.
- Ruling on the Request is POSTPONED for 30 days so that the filer may provide additional information.
- The Request is DENIED because the filer has the ability to pay.
- As explained in the attached statement, the Request is DENIED because:
 - The District Court lacks subject matter jurisdiction removal jurisdiction.
 - The action is frivolous or malicious.
 - The action fails to state a claim upon which relief may be granted.
 - The action seeks monetary relief against defendant(s) immune from such relief.

IT IS FURTHER ORDERED that:

- Within 30 days of the date of this Order, the filer must do the following:

If the filer does not comply with these instructions within 30 days, this case will be DISMISSED without prejudice.

- As explained in the attached statement, because it is absolutely clear that the deficiencies in the complaint cannot be cured by amendment, this case is hereby DISMISSED WITHOUT PREJUDICE WITH PREJUDICE.
- This case is REMANDED to state court as explained in the attached statement.

December 9, 2024

Date

/s/ Fernando M. Olguin

United States District Judge

On October 8, 2024, Plaintiff filed a Complaint and a Request to Proceed in Forma Pauperis (“IFP request”). (ECF Nos. 1, 5.) Plaintiff, an attorney, alleged that Defendants interfered with a motion for Plaintiff’s pro hac vice admission in the Los Angeles County Superior Court. (ECF No. 1 at 4.) Defendants allegedly made false statements to the state court about Plaintiff’s bar membership in the District of Columbia. (Id. at 6.) Plaintiff raised two claims: (1) a federal claim of racial discrimination under 42 U.S.C. § 1981 and (2) a state law claim of defamation. (Id. at 9-11.)

On October 31, 2024, the Court ordered Plaintiff to file another IFP request and an Amended Complaint. (ECF No. 15.) The Court ordered Plaintiff to allege under 42 U.S.C. § 1981, if he could, an impaired contractual relationship and sufficient authority by Defendants to interfere with Plaintiff’s ability to obtain a contract. (Id.)

On November 27, 2024, Plaintiff filed an Amended Complaint. (ECF No. 19.) Plaintiff continues to allege racial discrimination under 42 U.S.C. § 1981, but he does not identify an impaired contractual relationship under which he had any rights. (Id. at 10-11.) Instead, Plaintiff alleges that the Court misunderstood his claim and that he is not required to allege the existence of a contract in order to proceed under 42 U.S.C. § 1981. (ECF No. 18 at 3.)

Because Plaintiff seeks to proceed in forma pauperis, the Court has reviewed the Complaint to determine whether the action is frivolous or malicious; fails to state a claim upon which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). As stated below, the Amended Complaint is dismissed without further leave to amend.

“Any claim brought under 42 U.S.C. § 1981 . . . must initially identify an impaired ‘contractual relationship,’ § 1981(b), under which the plaintiff has rights.” *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006). Plaintiff’s argument that he is not required to identify a contract is incorrect. “Absent the requirement that the plaintiff himself must have rights under the contractual relationship, § 1981 would become a strange remedial provision designed to fight racial animus in all of its noxious forms[.]” *Domino’s*, 546 U.S. at 476. “[N]othing in the text of § 1981 suggests that it was meant to provide an omnibus remedy for all racial injustice. . . . Trying to make it a cure-all not only goes beyond any expression of congressional intent but would produce satellite § 1981 litigation of immense scope.” *Id.* at 479; see also *Banks v. American Airlines Group, Inc.*, 2022 WL 1537360, at *1 (9th Cir. 2022) (plaintiffs failed to state a claim for racial discrimination under 42 U.S.C. § 1981 when they failed to identify a contractual relationship under which they had rights). Thus, Plaintiff has failed to state a federal claim.

Because Plaintiff’s federal claim under 42 U.S.C. § 1981 must be dismissed for failure to state a claim, the state law claim for defamation is dismissed without prejudice. See *Les Shockley Racing, Inc. v. Nat’l Hot Rod Ass’n*, 884 F.2d 504, 509 (9th Cir.1989) (“When . . . the court dismisses the federal claim[s] leaving only state claims for resolution, the court should decline jurisdiction over the state claims and dismiss them without prejudice.”).

Finally, further leave to amend is not warranted. “The district court’s discretion to deny leave to amend is particularly broad where the court has already given the plaintiff an opportunity to amend his complaint.” *Fidelity Financial Corp. v. Fed. Home Loan Bank*, 792 F.2d 1432, 1438 (9th Cir.1986). “Because Plaintiff essentially re-pled the same facts and legal theories in his amended complaint,” an additional opportunity to amend is not warranted. *Loos v. Immersion Corp.*, 762 F.3d 880, 890 (9th Cir. 2014). Thus, the Amended Complaint is dismissed without further leave to amend, and this action is dismissed without prejudice.

(attach additional pages if necessary)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Laurack D. Bray,

PLAINTIFF(S)

v.

Matthew S. Kenefick, et al.,

DEFENDANT(S)

CASE NUMBER

2:24-cv-08640-FMO-AJR

ORDER ON REQUEST TO PROCEED
IN FORMA PAUPERIS
(NON-PRISONER CASE)

The Court has reviewed the Request to Proceed *In Forma Pauperis* (the "Request") and the documents submitted with it. On the question of indigency, the Court finds that the party who filed the Request:

- is not able to pay the filing fees. is able to pay the filing fees.
 has not submitted enough information for the Court to tell if the filer is able to pay the filing fees. This is what is missing:

Plaintiff reports monthly income of \$1,100 and monthly expenses of \$2,170. He fails to explain the monthly shortfall of \$1,070.

IT IS THEREFORE ORDERED that:

- The Request is GRANTED.
 Ruling on the Request is POSTPONED for 30 days so that the filer may provide additional information.
 The Request is DENIED because the filer has the ability to pay.
 As explained in the attached statement, the Request is DENIED because:
 The District Court lacks subject matter jurisdiction removal jurisdiction.
 The action is frivolous or malicious.
 The action fails to state a claim upon which relief may be granted.
 The action seeks monetary relief against defendant(s) immune from such relief.

IT IS FURTHER ORDERED that:

- Within 30 days of the date of this Order, the filer must do the following:

Plaintiff must file a Request to Proceed in Forma Pauperis that explains his monthly shortfall. In the alternative, he must pay the filing fee of \$405.

Plaintiff also must file an Amended Complaint. See the attached statement.

If the filer does not comply with these instructions within 30 days, this case will be DISMISSED without prejudice.

- As explained in the attached statement, because it is absolutely clear that the deficiencies in the complaint cannot be cured by amendment, this case is hereby DISMISSED WITHOUT PREJUDICE WITH PREJUDICE.
 This case is REMANDED to state court as explained in the attached statement.

October 31, 2024

/s/ Fernando M. Olguin

Date

United States District Judge

On October 8, 2024, Plaintiff filed a Complaint and a Request to Proceed in Forma Pauperis. (ECF Nos. 1, 5.) Plaintiff, an attorney, alleges that Defendants interfered with his motion for pro hac vice admission in the Los Angeles County Superior Court, in Civil Case No. 22STCV15022. (ECF No. 1 at 4.) Defendants allegedly made false statements to the state court about Plaintiff's bar membership in the District of Columbia. (Id. at 6.) Plaintiff raises two claims: (1) a federal claim of racial discrimination under 42 U.S.C. § 1981 and (2) a state law claim of defamation. (Id. at 9-11.)

Because Plaintiff seeks to proceed in forma pauperis, the Court has reviewed the Complaint to determine whether the action is frivolous or malicious; fails to state a claim upon which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). As explained below, the Complaint fails to state a federal claim.

Any claim brought under 42 U.S.C. § 1981 "must initially identify an impaired 'contractual relationship,' § 1981(b), under which the plaintiff has rights." *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006). Plaintiff has not identified a contractual relationship under which he had rights and that Defendants allegedly impaired.

Moreover, for Defendants to be liable under 42 U.S.C. § 1981, Plaintiff must allege that Defendants "both possessed sufficient authority to significantly interfere with the individual's ability to obtain contracts with third parties, and that the [defendant] actually exercised that authority to the [plaintiff's] detriment." *Painter's Mill Grille, LLC v. Brown*, 716 F.3d 342, 351 (4th Cir. 2013) (collecting cases). Plaintiff has not alleged how Defendants possessed any authority to significantly interfere with his ability to obtain a contract and actually exercised that authority.

"In dismissing for failure to state a claim, a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995). Plaintiff is granted leave to file an Amended Complaint. The Amended Complaint must be complete in itself and must not refer to the original Complaint. The Amended Complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The failure to file an Amended Complaint, or the filing of an Amended Complaint without the necessary allegations, may result in the dismissal of this action.

(attach additional pages if necessary)

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LAURACK D. BRAY,

Plaintiff,

v.

MATTHEW S. KENEFICK, et al.,

Defendants.

Case No. 2:24-cv-08640-FMO (AJR)

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE FOR
FAILURE TO COMPLY WITH A
COURT ORDER**

INTRODUCTION

On October 8, 2024, Plaintiff filed a Complaint and a Request to Proceed in Forma Pauperis (“IFP request”). (ECF Nos. 1, 5.) In the Complaint, Plaintiff alleged racial discrimination in violation of 42 U.S.C. § 1981 and a state law claim of defamation. (ECF No. 1 at 9-11.)

On October 31, 2024, the Court issued an order postponing a ruling on the IFP request until Plaintiff provided more information. (ECF No. 15.) The Court ordered Plaintiff either to file another IFP request that explains why his monthly expenses exceeds his monthly income by \$1,070 or to pay the filing fee of \$405. (*Id.*) The Court also ordered Plaintiff to file an Amended Complaint with more factual allegations for his claim of racial discrimination. (*Id.*) The Court warned

1 Plaintiff that his failure to comply with the Court's order within 30 days could
2 result in the dismissal of this action. (*Id.*)

3 As of this date, more than 30 days later, Plaintiff has not filed another IFP
4 request, paid the filing fee, or filed an Amended Complaint. Instead, Plaintiff has
5 filed a "Motion to the Chief Judge" arguing that this case was improperly assigned
6 to the undersigned District Judge and that this case should proceed before a
7 different District Judge who grants the IFP request. (ECF No. 16.) For the
8 following reasons, this action is dismissed without prejudice.

9 DISCUSSION

10 A. Legal Standard.

11 A district court has the inherent power under Federal Rule of Civil Procedure
12 41(b) to dismiss an action for failure to prosecute or to comply with the court's
13 order. *Link v. Wabash R. Co.*, 370 U.S. 626, 631 (1962). Specifically, the failure of
14 a plaintiff to comply with a district court's order to file an amended complaint is
15 properly met with the sanction of dismissal under Rule 41(b). *Applied*
16 *Underwriters, Inc., v. Lichtenegger*, 913 F.3d 884, 891 (9th Cir. 2019) (collecting
17 cases). "Under Ninth Circuit precedent, when a plaintiff fails to amend his
18 complaint after the district judge dismisses the complaint with leave to amend, the
19 dismissal is typically considered a dismissal for failing to comply with a court order
20 rather than for failing to prosecute the claim." *Yourish v. California Amplifier*, 191
21 F.3d 983, 986 (9th Cir. 1999).

22 "[I]n order for a court to dismiss a case as a sanction, the district court must
23 consider five factors: '(1) the public's interest in expeditious resolution of litigation;
24 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants;
25 (4) the public policy favoring disposition of cases on their merits; and (5) the
26 availability of less drastic alternatives.'" *Yourish*, 191 F.3d at 986 (quoting
27 *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998)). A district
28 court's sanction of dismissal generally will be affirmed where at least four factors

1 support dismissal or where at least three factors strongly support it. *Hernandez*, 138
2 F.3d at 399. As stated below, four of the five factors support dismissal.

3 **B. Analysis.**

4 **1. The Public's Interest in Expeditious Resolution.**

5 The first factor supports dismissal. "[T]he public's interest in expeditious
6 resolution of litigation always favors dismissal." *Yourish*, 191 F.3d at 990.

7 **2. The Court's Need to Manage Its Docket**

8 The second factor also supports dismissal. Plaintiff's failure to respond to
9 the Court's Order interferes with the Court's ability to manage its docket. *See*
10 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) ("The trial judge is in the
11 best position to determine whether the delay in a particular case interferes with
12 docket management and the public interest. Arguably, Pagtalunan's petition has
13 consumed some of the court's time that could have been devoted to other cases on
14 the docket.") (internal citation omitted); *see also Irvin v. Madrid*, 749 F. App'x
15 546, 547 (9th Cir. 2019) ("The second factor also favors dismissal because the
16 district court is in the best position to determine whether a particular set of
17 circumstances interferes with docket management.").

18 **3. The Risk of Prejudice to Defendants.**

19 The third factor also supports dismissal. The risk of prejudice is "related to the
20 plaintiff's reason for defaulting in failing to timely amend." *Yourish*, 191 F.3d at
21 991. The record suggests no plausible reason for Plaintiff's failure to comply with
22 the Court's Order. This indicates sufficient prejudice to Defendant. *See In re Eisen*,
23 31 F.3d 1447, 1452-53 (9th Cir. 1994) (recognizing that the law presumes injury to
24 the defendants from unreasonable delay).

25 **4. The Public Policy Favoring Disposition of the Merits.**

26 The fourth factor weighs against dismissal. "We have often said that the
27 public policy favoring disposition of cases on their merits strongly counsels against
28 dismissal." *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460

1 F.3d 1217, 1228 (9th Cir. 2006) (citing *Hernandez*, 138 F.3d at 399). On the other
2 hand, “this factor lends little support to a party whose responsibility it is to move a
3 case toward disposition on the merits but whose conduct impedes progress in that
4 direction.” *Products Liability Litigation*, 460 F.3d at 1228 (citations and quotation
5 marks omitted). Thus, this factor alone does not preclude dismissal.

6 **5. The Availability of Less Drastic Alternatives.**

7 The fifth factor supports dismissal. “Here the fact that the district court
8 allowed [Plaintiff] an additional thirty days to amend his complaint . . . constituted
9 an attempt at a less drastic sanction than outright dismissal.” *Ferdik v. Bonzelet*,
10 963 F.2d 1258, 1262 (9th Cir. 1992). The Court also warned Plaintiff that the
11 failure to comply with the Court’s Order to amend his Complaint would result in
12 dismissal. *See Products Liability Litigation*, 460 F.3d at 1229 (“Warning that
13 failure to obey a court order will result in dismissal can itself meet the
14 ‘consideration of alternatives’ requirement.”) (citing, *inter alia*, *Ferdik*, 963 F.2d at
15 1262 (“Moreover, our decisions also suggest that a district court’s warning to a
16 party that his failure to obey the court’s order will result in dismissal can satisfy the
17 ‘consideration of alternatives’ requirement.”)). Despite the Court’s warning,
18 Plaintiff failed to file an Amended Complaint.

19 **C. Conclusion.**

20 Four of the five factors support dismissal of the action for failure to comply
21 with an Order of the Court. Moreover, the severity of the sanction is lessened
22 because the dismissal is without prejudice rather than with prejudice, thereby
23 “giving the plaintiff an opportunity to return and prosecute his claims another day.”
24 *Ash v. Cvetkov*, 739 F.2d 493, 497 (9th Cir. 1984). In sum, dismissal without
25 prejudice is warranted.

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ORDER

It is ordered that the action is dismissed without prejudice. Fed. R. Civ. P.
41(b).

DATED: December 3, 2024

/s/
FERNANDO M. OLGUIN
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 8 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LAURACK D. BRAY,

Plaintiff - Appellant,

v.

Mr. MATTHEW SCOTT KENEFICK
Esquire, Attorney, individually and as
partner in Jfeffers Mangels; et al.,

Defendants - Appellees.

No. 24-7622

D.C. No.

2:24-cv-08640-FMO-AJR

Central District of California,
Los Angeles

ORDER

It appears that this appeal may be frivolous. If the appeal is frivolous, the court will deny permission to proceed in forma pauperis and dismiss the appeal.

See 28 U.S.C. § 1915(e)(2).

Within 35 days, appellant must:

- (1) file a statement explaining why the appeal is not frivolous, OR
- (2) file a motion to voluntarily dismiss the appeal, *see* Fed. R. App. P. 42(b).

If appellant files a statement explaining why the appeal is not frivolous, or any other response other than a motion to dismiss, the court will determine whether the appeal is frivolous. If it is frivolous, the appeal will be dismissed. If it is not frivolous, the appeal will proceed.

Briefing is stayed.

APPX G

If appellant does not respond to this order, the court may dismiss this appeal without further notice.

The clerk will serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

**Additional material
from this filing is
available in the
Clerk's Office.**