

ERIC J. DUARTE,  
Plaintiff,  
  
v.  
  
DANIELLE FRANE, et al.,  
Defendants.

## Dockets.Justia.com

the courts by restricting access to the law library and not providing a typewriter; and (2) NCCC does not have viable grievance procedure. (Docket # 1). After reviewing the pleading pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A,<sup>1</sup> on August 11, 2023, the Court issued an order in which it found that Duarte had failed to state a claim upon which relief could be granted with regard to both issues. (Docket # 12). The Court ordered Duarte to file an amended complaint within thirty-five days but later extended the filing deadline to October 16, 2023.

#### **B. Amended Complaint**

On October 17, 2023, Duarte filed his amended complaint. (Docket # 18). The original six-page handwritten complaint has bloated into a 124-page typed pleading and the number of defendants has jumped from three to forty-one (plus "unknown"

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<sup>1</sup> Under 28 U.S.C. § 1915(e)(2), when a plaintiff is allowed to proceed without prepayment of the filing fee, the Court reviews the complaint prior to the issuance of any summons. Similarly, under 28 U.S.C. § 1915A, prisoner complaints that seek redress from a governmental entity or officers or employees of a governmental entity are subject to a preliminary screening. For purposes of 28 U.S.C. § 1915A, the definition of "prisoner" includes a pretrial detainee. See 28 U.S.C. § 1915A(c). Both § 1915(e)(2) and § 1915A authorize a court to dismiss sua sponte the complaint or any claim therein if it is frivolous, malicious, fails to state a claim on which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2), § 1915A(b).

parties). Whereas the scope of the original complaint was well-defined (access to the courts and NCCC's grievance procedure), the amended complaint covers a wide range of alleged misconduct and has 110 counts.

## **II. Discussion**

### **A. Failure to Set Forth a Short and Plain Statement of the Claim**

Under the Federal Rules of Civil Procedure, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).

The statement should be short because "[u]nnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage." Miranda v. United States, 105 Fed. App'x 280, 281 (1st Cir. 2004) (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1281, at 522 (2d ed. 1990)); see also United States ex rel. Garst v. Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir. 2003) ("Length may make a complaint unintelligible, by scattering and concealing in a morass of irrelevancies the few allegations that matter.").

The statement should be plain because the principal functions of pleadings are to (1) give defendants fair notice of the basis for the claims against them so that they may respond,

see Silverstrand Invs. v. AMAG Pharm., Inc., 707 F.3d 95, 101 (1st Cir. 2013), and (2) allow the Court to determine whether the complaint contains sufficient factual allegations, which, treated as true, allow the Court to reasonably infer that the plaintiff is entitled to relief, see Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

Duarte's lengthy, cluttered, and repetitive amended complaint provides neither a short nor plain statement of his claim. Due to this pleading defect, it is difficult for the court to discern whether it contains sufficient factual content, which, if treated as true, would show that any of the defendants are liable to Duarte. The defendants are not required to respond to such a pleading.

#### **B. Failure to Set Forth a Plausible Claim**

It is not enough for a pleading to include "a short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2). A pleading must also "show[] that the pleader is entitled to relief." Id. In other words, to state a claim upon which relief can be granted, a pleading must "contain sufficient factual matter, accepted as true" to state a plausible claim for relief. Iqbal, 556 U.S. at 662. A plaintiff's obligation to provide the grounds of his claim "requires more than labels and conclusions." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "A claim has facial plausibility when the plaintiff

pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. The plausibility standard is not as onerous as a “‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully. Id. (quoting Twombly, 550 U.S. at 556). “Determining whether a pleading meets the plausibility requirement is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Id. at 679.

Here, Duarte’s amended complaint does not contain sufficient factual material from which the Court may reasonably inferred that the defendants are liable to him. The ballooned nature of the amended complaint may obscure some claims that, if pruned and re-pled, might state a basis for relief. Other allegations clearly do not provide a basis for relief. In particular, Duarte’s fantastical allegations throughout the amended complaint that he was subject to “cyber bullying,” electronic surveillance, and mind control technology, see, e.g., Amend. Compl. ¶¶ 78, 113, 115, 125, 135, 145, 157, 201, 315, 319, 335, 347, do not state plausible claims. Similarly, Duarte includes many conclusory claims that are not supported by specific factual allegations. See, e.g., id. 297-298 (allegations of retaliatory transfer); see also Twombly, 550

U.S. at 555 (stating that "a formulaic recitation of the elements of a cause of action" does not fulfill the plaintiff's obligation to show that he is entitled to relief).

Accordingly, the amended complaint will be dismissed. If Duarte wishes to pursue this action, he must file a second amended complaint that contains a "short and plain" statement of his claim which shows that he is entitled to relief.

### **III. Improper Joinder of Parties**

Further, the sprawling nature of the amended complaint runs afoul of rules limiting claims against multiple defendants. Where a plaintiff brings claims against more than one defendant in a single lawsuit, the claims must be limited to those that "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences" and a "question of law of fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). In other words, "[w]here a plaintiff brings claims against more than one defendant in a single lawsuit, plaintiff may join multiple defendants in a single action only if plaintiff asserts at least one claim to relief against each of them that arises out of the same transaction or occurrence and presents questions of law or fact common to all." 7 Charles Alan Wright et al., Federal Practice and Procedure § 1655 (3d ed.). The Court cannot discern such a claim in the amended complaint.

If Duarte elects to file a second amended complaint, it must comply with the limitation on the joinder of defendants set forth in Rule 20. This will require Duarte to omit some, if not many, of the defendants and the 110 counts in the present amended complaint. Of course, Duarte is free to bring a separate lawsuit to bring any claims he must omit from this action to comply with Rule 20.

#### **IV. Duarte's State Court Action**

The Court takes judicial notice that, on October 17, 2023, Duarte filed an almost identical amended complaint in Duarte v. Norfolk County Sheriffs Office, 2382CV00345 (Norfolk Sup. Ct.) (Docket # 20). In an October 27, 2023 margin order, the state court dismissed the amended pleading on essentially the same grounds articulated by this Court: "The Amended Complaint is DISMISSED . . . [because] it is not a reasonably concise statement of Plaintiff's claim that states one or more understandable and plausible causes of action. . . . To the contrary, Plaintiff's Amended Complaint contains numerous verbose, fantastic, and oftentimes incomprehensible allegations. . . ." The state court is giving Duarte the opportunity to "file a motion to leave to amend on or before November 15, 2023 with a copy of his proposed, further amended complaint attached," and stated that "[i]f Plaintiff fails to file such a

motion in a timely manner, th[e] action shall be dismissed with prejudice.” Id.

While this Court will continue to exercise its jurisdiction over this case pending any resolution of the parallel state action, the final disposition of the state action could have res judicata effect on this case.

## **V. Prison Litigation Reform Act**

The Prison Litigation Reform Act (“PLRA”) imposes certain limitations on prisoner litigation which Duarte should be aware as he considers his litigation in the federal courts. For purposes of the PLRA, the definition of a “prisoner” includes a pretrial detainee. See 28 U.S.C. § 1915(h).

### **A. Filing Fee**

Under the PLRA, indigent prisoners are not entitled to a waiver of the \$350 statutory filing fee for bringing a non-habeas civil action. See 28 U.S.C. § 1915(b). A federal district court may allow a prisoner to proceed without prepayment of the filing fee, but the prisoner is still required to pay the \$350 statutory filing fee over time, regardless of the duration or outcome of the case. See id.

After an initial partial filing fee is collected, see 28 U.S.C. § 1915(b)(1), “the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2).



The treasurer of the facility in which the prisoner is confined “shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.” Id.

If a prisoner has outstanding filing fees in more than one case, the filing fees are connected simultaneously rather than consecutively. See Bruce v. Samuels, 577 U.S. 82, 87 (2016). Thus, if a prisoner has simultaneous filing fee obligations in five cases, once the initial partial filing fee is paid in each case, he would be required to pay one hundred percent of the preceding month’s income credited to this account.

Similarly, under the PLRA, an indigent prisoner who is allowed to appeal in forma pauperis must pay the appeal fee (currently \$505) over time. See 28 U.S.C. 1915(b).

#### **B. “Three Strikes” Rule**

Further, the Court also warns Duarte that, under the PLRA, a prisoner generally cannot proceed in forma pauperis (i.e., without prepayment of the relevant fee) when bringing a non-habeas civil action or appealing a judgment in a non-habeas case, if he has, on three or more prior occasions, brought an action or appeal that was dismissed on the ground that it was frivolous, was malicious, or failed to state a claim upon which relief can be granted. See 28 U.S.C. § 1915(g). Where a prisoner accumulates “three strikes,” he may proceed in forma

pauperis only if he is “under imminent danger of serious physical injury” with regard to the misconduct alleged in the complaint. Id.; see also Pettus v. Morgenthau, 554 F.3d 293, 297 (2d Cir. 2009) (holding that “there must be a nexus between the imminent danger a three-strikes prisoner alleges to obtain IFP status and the legal claims asserted in his complaint”).

## **VI. Motion for Appointment of Counsel**

Under 28 U.S.C. § 1915(e)(1), the Court “may request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). However, a civil plaintiff lacks a constitutional right to free counsel. See DesRosiers v. Moran, 949 F.2d 15, 23 (1st Cir. 1991). The appointment of counsel for an indigent party is required only when exceptional circumstances exist such that the denial of counsel will result in fundamental unfairness impinging on the party’s due process rights. See id. In considering whether the appointment of counsel is necessary, the Court considers the “total situation,” including “the merits of the case, the complexity of the legal issues, . . . the litigant’s ability to represent himself,” id. at 24, and the efforts the litigant has made to obtain legal representation.

In the absence of a complaint that meets basic pleading standards, exceptional circumstances requiring the appointment of pro bono counsel are not present. Accordingly, the motion

for appointment of counsel (Docket # 20) is DENIED without prejudice.

**ORDER**

In accordance with the foregoing:

1. The amended complaint (Docket # 18) is DISMISSED.
2. If Duarte wishes to pursue this action, he must, within thirty-five (35) days, file a second amended complaint that cures the above-discussed pleading deficiencies. Failure to do so will result in dismissal of this action.
3. The motion for appointment of counsel (Docket # 20) is DENIED.

**So ordered.**

/s/ Nathaniel M. Gorton  
Nathaniel M. Gorton  
United States District Judge

Dated: November 13, 2023