

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 5, 2026

Christopher M. Wolpert
Clerk of Court

LELAND WILLIAM CALDER,

Plaintiff - Appellant,

v.

ANDY ZWEBER, President of
General Distributing Company for
Budweiser/Anheuser Busch/ABInBev;
CLEMENS LANDAU, Judge for Salt
Lake City Justice Court;
BUDWEISER, a brand of
AnheuserBusch Companies, LLC;
ANHEUSERBUSCH COMPANIES;
AB INBEV, AnheuserBusch InBev
SA/NV; BLAINE BERNARD,
Attorney at Holland & Hart; SCOTT
VAN WAGONER, Sergeant of Salt
Lake City Police Department; MIKE
BROWN, Chief of Salt Lake City
Police Department; ERIN
MENDENHALL, Mayor of Salt Lake
City; SIM GILL, District Attorney;
JEANNE ROBINSON, Judge for Salt
Lake City Justice Court; SYDNEY
MAGID, Judge for Salt Lake City
Justice Court; SPENCER J. COX,
Governor; MIKE MCKELL, Senator;
SEAN REYES, Attorney General,

Defendants - Appellees.

No. 26-4051
(D.C. No. 2:25-CV-00046-HCN)
(D. Utah)

ORDER AND JUDGMENT*

* After examining the briefs and appellate record, this panel has
determined unanimously it will decide the issues based on Appellant's brief
(footnote continued)

Before **TYMKOVICH, PHILLIPS, and FEDERICO**, Circuit Judges.

Leland William Calder appeals the dismissal of his pro se 42 U.S.C. § 1983 action for failure to state a claim upon which relief can be granted. Exercising our jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

Calder alleges he was assaulted by three people working at the Budweiser General Distributing facility in Salt Lake City, Utah. Calder says he later received a cease-and-desist letter from Holland & Hart, the law firm representing Anheuser-Busch. The letter stated “that the company possessed an original police report and that the assault had been captured on camera.” Br. at 1. Calder argues the firm intended to intimidate him and suppress his speech by sending the letter.

Proceeding in forma pauperis (IFP), Calder filed a pro se civil rights complaint in the District of Utah. A magistrate judge screened Calder’s complaint and found it to be deficient. Calder filed an amended complaint listing twelve defendants and many claims. Later the same day, he filed a corrected amended complaint naming only three defendants: Budweiser;

without oral argument. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Anheuser-Busch Companies, LLC; and AB InBev.¹ This version alleged claims for (1) assault and battery, (2) negligent supervision, (3) intentional infliction of emotional distress, and (4) civil conspiracy.

The district court referred Calder's corrected amended complaint back to the magistrate judge, who then issued a Report and Recommendation. The magistrate judge advised that the complaint failed to allege federal jurisdiction for the first three claims and failed to state a claim for all four claims.

Identifying deficiencies in the corrected amended complaint, the magistrate judge first noted that it failed to identify who had participated in the alleged assault and battery and failed to identify how the alleged cease-and-desist letter from Holland & Hart impaired Calder's rights. Second, the judge found that Calder did not connect any alleged acts to the elements of a negligence claim. Third, the judge stated that Calder failed to allege the required extreme conduct for a claim of intentional infliction of emotional distress. And fourth, the judge noted that Calder had not provided factual support for any element of a civil conspiracy claim under Utah law. For those reasons, the magistrate judge advised that Calder's corrected amended

¹ The district court dismissed the defendants Calder did not name in the corrected amended complaint after he failed to file a third amended complaint clarifying the correct defendants. We review Calder's appeal considering the twelve dismissed defendants and the three included in the corrected amended complaint out of an abundance of caution.

complaint failed the screening under 28 U.S.C. § 1915 and recommended dismissing the case.

The district court adopted the magistrate judge's Report and Recommendation and dismissed the case without prejudice over Calder's objections. The court stated Calder's conspiracy claim was his only cause of action plausibly rooted in federal law. For his other claims, Calder failed to allege state action and did not establish diversity of citizenship. The court declined to exercise jurisdiction over Calder's state-law claims. It entered a separate judgment dismissing his conspiracy claim for failure to state a claim.

Calder moved to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). His motion challenged the district court's rulings that he had failed to state a claim, allege federal jurisdiction, and establish diversity of citizenship. The motion was initially lodged and then stricken in the district court system. In the meantime, he appealed. When the motion was discovered, Calder's appeal was abated to allow the district court time to rule on it.

The district court granted Calder's motion in part. *Calder v. Zweber*, No. 25-cv-46, 2026 WL 2267712, at *1 (D. Utah Aug. 5, 2026). The district court concluded that it had diversity jurisdiction over the state-law claims but found that Calder failed to state any claims. *Id.* at *1–3. It also found Calder waived his objections to the Report and Recommendation because he responded with broad, conclusory assertions. *Id.* at *2. The district court entered an amended judgment.

Calder appealed and filed his appellate brief before the district court entered its order on his Rule 59(e) motion. After the court entered its order, Calder again appealed and filed a supplemental brief. On appeal, he argues that the district court failed to properly review his well-pleaded facts and liberally construe his claims against the individual defendants and the municipal and state entities. He proceeds IFP on appeal.

STANDARD OF REVIEW

We review de novo a dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim. *McBride v. Deer*, 240 F.3d 1287, 1289 (10th Cir. 2001). We review such dismissals as we review motions to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Kay v. Bemis*, 500 F.3d 1214, 1217–18 (10th Cir. 2007). We ask if the complaint contains “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *VDARE Found. v. City of Colorado Springs*, 11 F.4th 1151, 1158 (10th Cir. 2021) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)) (citation modified). Because Calder proceeds pro se, we liberally construe his pleadings. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

DISCUSSION

On appeal, Calder contends that the district court failed to liberally construe his well-pleaded allegations. He vaguely alleges that he properly asserted claims against the individual defendants and the municipal and state entities. And he argues that the district court repeatedly “lodged” many of his

filings by omitting them from the docket, making it impossible for Calder to cure his omissions. Suppl. Br. at 2–3. But even liberally construing his brief and supplemental brief, we agree with the district court that Calder failed to state a claim.

I. Procedural Errors

Though he claims the district court made procedural errors that prevented him from filing a third amended complaint, Calder has presented nothing rebutting his substantial pleading failures.

In its Rule 59(e) order, the district court noted Calder repeatedly failed to cure his pleading deficiencies. Instead, he offered unsubstantiated claims that his filings were suppressed in the district court’s system:

In one submission, Mr. Calder represents that he submitted a third amended complaint “through the Court’s CM/ECF electronic filing system” on March 18, 2025, and that the “submission was received and logged by the system as documented” but “due to what appears to be a technical or processing issue, the document was not docketed as ‘filed’” and thus “does not appear on the public docket.” But although the court has reviewed the entire docket, it cannot locate any such submission. Further, although Mr. Calder purports to attach “a screenshot of the CM/ECF upload confirmation / receipt / timestamp showing successful submission” of the third amended complaint as an exhibit to this submission, the court has been unable to locate any such exhibit.

Calder, 2026 WL 2267712, at *2 n.1 (citations omitted). The district court listed several of Calder’s filing deficiencies.² *Id.* at *2.

² The district court also noted Calder filed a new action a few weeks after the court entered judgment. The court observed that this complaint “appears
(footnote continued)

Still, Calder fails to support his claims on appeal. He focuses on the district court's purported procedural failures. But he does not clarify what information the district court lacked from his lost filings when it dismissed his complaint.

We find Calder's arguments about procedural failures unavailing. The district court properly concluded that Calder failed to state a claim and did not comply with the minimum pleading requirements under Federal Rule of Civil Procedure 8. *Id.* at *1–2.

II. Waiver

On appeal, Calder asserts an additional claim that Salt Lake City Police officials failed to investigate his assault. Without explanation, he asserts that these officials retaliated by pursuing unrelated criminal charges against him. But just as Calder could not amend his complaint by objecting to the magistrate judge's Report and Recommendation, *Calder*, 2026 WL 2267712, at *2, he cannot amend his complaint in his appellate brief, *Waller v. City and County of Denver*, 932 F.3d 1277, 1286 n.1 (10th Cir. 2019). Still, we conclude that Calder's new claim as pleaded fails to state a claim under § 1983. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980) (requiring a plaintiff asserting a claim under

largely to mirror his original complaint here and may well constitute the 'third amended complaint' that Mr. Calder failed to file in this action." *Id.* at *2 n.2.

§ 1983 to allege (1) a deprivation of a federal right (2) by someone acting under color of state law).

CONCLUSION

We AFFIRM the district court's dismissal of Calder's complaint for failure to state a claim.

Entered for the Court

Gregory A. Phillips
Circuit Judge