

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Burton v. McVay

No. 24-cv-1302-MMA (JLB) (S.D. Cal. Mar. 25, 2025) · No. 24-cv-1302-MMA (JLB) · Decided March 25, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed a pro se state prisoner’s 42 U.S.C. § 1983 action without prejudice. The court found that the plaintiff failed to state a claim and failed to prosecute after repeatedly receiving extensions of time to file an amended complaint.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Michael M. Anello
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 25, 2025
DOCKET	24-cv-1302-MMA (JLB)
DISPOSITION	dismissed
PROCEDURAL POSTURE	A pro se state prisoner proceeding in forma pauperis brought a civil-rights action under 42 U.S.C. § 1983. After dismissing the complaint for failure to state a claim and granting multiple extensions to amend, the court dismissed the action without prejudice when plaintiff failed to file an amended complaint.
PRECEDENTIAL VALUE	Nonprecedential district court order
PARTIES	Derek Burton v. McVay, Warden, et al.

TOPICS

- section 1983
- prisoners rights
- pleadings
- motions to dismiss
- civil procedure

PRACTICE AREAS

- Civil procedure
- Prisoner civil rights
- Federal courts

QUESTIONS PRESENTED

1. Whether the action should be dismissed for failure to state a claim after plaintiff failed to amend the complaint despite being granted leave and multiple extensions.
2. Whether the action should be dismissed for failure to prosecute when plaintiff failed to file an amended complaint.

HOLDINGS

1. When a plaintiff does not take advantage of an opportunity to cure deficiencies in a complaint, the district court may dismiss the entire action; because Burton filed no amended complaint after multiple extensions, dismissal without prejudice was warranted.
2. Failure to file an amended complaint after repeated extensions and an explicit warning warranted dismissal for failure to prosecute.

KEY QUOTATIONS

“Accordingly, the Court DISMISSES this action without prejudice for failure to state a claim upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) & 1915A(b)(1), and for failure to prosecute.”
(at 2)

FACTUAL BACKGROUND

Plaintiff Derek Burton is a state prisoner proceeding pro se and in forma pauperis. The court previously found that his § 1983 complaint failed to state a claim and gave him leave to amend. Despite three extensions of time and an explicit warning, Burton did not file an amended complaint by the final deadline.

PROCEDURAL HISTORY

The court dismissed the original complaint on August 11, 2024, for failure to state a claim and granted leave to amend. The court granted three extensions of the amendment deadline, ultimately extending it to January 16, 2025, and warned that failure to amend would result in dismissal for failure to state a claim and failure to prosecute. Plaintiff did not file an amended complaint, so the court dismissed the action without prejudice and directed the clerk to enter final judgment and close the case.

DISPOSITION

dismissed

CASES CITED

- Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005)

OPINION

Burton v. McVay

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 DEREK BURTON, Case No.: 24-cv-1302-MMA (JLB)

CDCR #AI-5407,

12

ORDER DISMISSING CASE FOR

Plaintiff,

13 FAILURE TO STATE A CLAIM

vs. AND FAILURE TO PROSECUTE

14 MCVAY, Warden, et al., 15 Defendants. 16 17 18 19 Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil 20 rights action pursuant to 42 U.S.C. § 1983. On August 11, 2024, the Court dismissed the 21 complaint for failure to state a claim and granted Plaintiff leave to amend on or before

22 September 27, 2024. Doc. No. 5. On September 10, 2024, the Court granted Plaintiff's

23 motion for a 30-day extension of time to amend until October 28, 2024; on October 29, 24 2024, the Court granted Plaintiff's second motion for a 30-day extension of time to 25 amend until November 28, 2024; on December 11, 2024, the Court granted Plaintiff's 26 third motion for a 30-day extension of time to amend until January 16, 2025. Doc.

27 Nos. 7, 9, 11. Plaintiff was instructed that if he failed to timely amend the Court will

28 dismiss this action for failure to state a claim and failure to prosecute. Doc. No. 11 at 2 1 (citing Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005) ("If a plaintiff does not take 2 advantage of the opportunity to fix his complaint, a district court may convert the 3 dismissal of the complaint into dismissal of the entire action."0). To date, Plaintiff has 4 not filed an amended complaint. 5 Accordingly, the Court DISMISSES this action without prejudice for failure to 6 state a claim upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) 7 & 1915A(b)(1), and for failure to prosecute. The Clerk of Court shall enter final 8 judgment accordingly and close the file. 9 IT IS SO ORDERED. 10 Dated: March 25, 2025 11 _____

12 HON. MICHAEL M. ANELLO

United States District Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28