

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

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

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