

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

McVay v. Rodriguez

McVay · No. 1:24-cv-01059-BAM (PC) · Decided May 12, 2025

SUMMARY

The United States District Court for the Eastern District of California strikes Plaintiff Darron McVay's first amended complaint because it was unsigned. The court directs the Clerk to provide a civil rights complaint form and gives Plaintiff 30 days to file a signed amended complaint or a notice of voluntary dismissal. The order warns that failure to comply may result in dismissal with prejudice.

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA
9 10 DARRON MCVAY, Case No. 1:24-cv-01059-BAM (PC) 11 Plaintiff, ORDER STRIKING
UNSIGNED FIRST AMENDED COMPLAINT AND REQUIRING 12 v. PLAINTIFF TO FILE
A SIGNED FIRST 13 RODRIGUEZ, et al., AMENDED COMPLAINT 14 Defendants. (ECF No.
12) 15 THIRTY (30) DAY DEADLINE 16 17 Plaintiff Darron McVay ("Plaintiff") is a former
state prisoner proceeding pro se and in 18 forma pauperis in this civil rights action under 42
U.S.C. § 1983.

19 On March 4, 2025, the Court screened the complaint and granted Plaintiff leave to file a 20
first amended complaint curing the identified deficiencies, or to file a notice of voluntary 21
dismissal. (ECF No. 9.) On April 7, 2025, the Court granted Plaintiff's motion for a thirty-day 22
extension of time to file a first amended complaint. (ECF Nos. 10, 11.)

The Court's order 23 granting the extension of time was returned as "Undeliverable, Inactive" on
April 21, 2025. 24 Currently before the Court is Plaintiff's first amended complaint and updated
address, 25 filed May 9, 2025. (ECF No. 12.)

In preparing to screen the first amended complaint, pursuant to 26 28 U.S.C. § 1915A(a), the
Court noted that the document is not signed. (ECF No. 12, p. 6.) 27 Both the Federal Rules of
Civil Procedure and this Court's Local Rules require that all 28 filed pleadings, motions and
papers be signed by at least one attorney of record or by the party 1 personally if the party is
unrepresented.

Fed. R. Civ. P. 11(a); Local Rule 131(b). As Plaintiff's 2 first amended complaint is unsigned, the
Court must strike it from the record. Plaintiff will be 3 permitted an opportunity to file a signed
complaint that complies with the Federal Rules of Civil 4 Procedure and the Local Rules. 5

Plaintiff is further reminded that, now that he has been released from custody, the prison mailbox rule no longer applies to his filings.

Under the mailbox rule, a prisoner's pleadings are deemed to be filed as of the date the prisoner delivered it to the prison authorities for mailing to the court clerk. See *Houston v. Lack*, 487 U.S. 266, 270 (1988); *Douglas v. Noelle*, 567 F.3d 911, 1108–09 (9th Cir. 2009) (mailbox rule articulated in *Houston* applies to civil rights actions). Now that Plaintiff has been released from custody, when papers are mailed to the Clerk's Office, filing is complete when the papers are received by the Clerk of the Court.

Cooper v. City of Ashland, 871 F.2d 104, 105 (9th Cir. 1989) (emphasis added). Based on the foregoing, it is HEREBY ORDERED that: 1. Plaintiff's first amended complaint, filed May 9, 2025, (ECF No. 12), is STRICKEN from the record for lack of signature; 2.

The Clerk of the Court is directed to send to Plaintiff a civil rights complaint form; 3. Within thirty (30) days from the date of service of this order, Plaintiff SHALL file a signed first amended complaint, or a notice of voluntary dismissal; and 4. Plaintiff is warned that the failure to comply with this order will result in dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a claim.

IT IS SO ORDERED. Dated: May 12, 2025 /s/ Barbara A. McAuliffe _ UNITED STATES MAGISTRATE JUDGE