

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Toepfer v. City of Vallejo

No. 2:24-cv-02366-KJM-CSK (E.D. Cal. Feb. 27, 2025) · No. 2:24-cv-02366-KJM-CSK · Decided February
28, 2025

OPINION

(PS) Toepfer v. City of Vallejo

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 ROBERT TOEPFER, et al., Case No. 2:24-cv-02366-KJM-CSK 12 Plaintiffs, 13 v. ORDER
14 CITY OF VALLEJO, et al., 15 Defendants. 16 17 On October 7, 2024, the undersigned issued
Findings and Recommendations 18 denying Plaintiffs Robert Toepfer, Shawn O'Malley, Joan
Alford, James Nelson, Pam 19 Nelson, Cassandra Salinas, and Michael L. Mardell's Motion for
Temporary Restraining 20 Order and Preliminary Injunction (ECF No. 3) and dismissing
Plaintiff's Complaint (ECF

21 No. 1) without prejudice. (ECF No. 22.)¹ The Findings and Recommendations were
22 issued after the Court held a hearing at which all Plaintiffs appeared, and where the 23 Court
explained the procedures for Findings and Recommendations, and the timing for 24 the objection
period. (ECF No. 20.) No objections were filed to the October 7, 2024 25 Findings and
Recommendations. See Docket. On December 6, 2024, the District Judge 26 adopted the Findings
and Recommendations in full, denying Plaintiffs' Motion for 27 1 This matter proceeds before the
undersigned pursuant to 28 U.S.C. § 636, Fed. R. 28 Civ. P. 72, and Local Rule 302(c)(21). 1
Temporary Restraining Order and Preliminary Injunction and dismissing Plaintiffs' 2 Complaint
with leave to amend, and directing Plaintiffs to file an amended complaint 3 within thirty (30)
days of the date of the order. (ECF No. 23.) The applicable deadline has 4 now passed, and
Plaintiffs have failed to file an amended complaint. In addition, on

5 October 9, 2024, October 15, 2024, October 16, 2024, October 17, 2024, October 21,
6 2024, October 22, 2024, November 4, 2024, December 26, 2024, and January 6, 2025, 7 mail
was returned as undeliverable. To date, Plaintiffs Shawn O'Malley, Joan Alford, 8 James Nelson,
Pam Nelson, Cassandra Salinas, and Michael L. Mardell have not 9 updated their addresses with
the Court. Plaintiff Robert Toepfer is the only plaintiff for 10 whom the Court's December 6, 2024
Order was not returned as undeliverable. See 11 Docket. 12 A district court may impose sanctions,
including involuntary dismissal of a 13 plaintiff's case pursuant to Federal Rule of Civil
Procedure 41(b), where the plaintiff fails 14 to prosecute his or her case or fails to comply with the

court's orders, the Federal Rules 15 of Civil Procedure, or the court's local rules. See *Chambers v. NASCO, Inc.*, 501 U.S. 16 32, 44 (1991) (recognizing that a court "may act sua sponte to dismiss a suit for failure to 17 prosecute"); *Hells Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 18 (9th Cir. 2005) (approving sua sponte dismissals under Rule 41(b)); *Ferdik v. Bonzelet*, 19 963 F.2d 1258, 1260 (9th Cir. 1992), as amended (May 22, 1992) ("Pursuant to Federal 20 Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to 21 comply with any order of the court."). This Court's Local Rules are in accord. See E.D. 22 Cal. Local Rule 110 ("Failure of counsel or of a party to comply with these Rules or with 23 any order of the Court may be grounds for imposition by the Court of any and all 24 sanctions authorized by statute or Rule or within the inherent power of the Court."); E.D. 25 Cal. Local Rule 183(a) (providing that a pro se party's failure to comply with the Federal 26 Rules of Civil Procedure, the court's Local Rules, and other applicable law may support, 27 among other things, dismissal of that party's action). 28 The Court has considered whether this action should be dismissed at this juncture 1 due to Plaintiffs' failure to file an amended complaint as ordered by the Court and for 2 failure to notify the Court of Plaintiffs Shawn O'Malley, Joan Alford, James Nelson, Pam 3 Nelson, Cassandra Salinas, and Michael L. Mardell's current addresses. At the October 4 4, 2024 hearing, which all Plaintiffs attended, the Court explained the procedures for 5 Findings and Recommendations, the timing for the objection period, and reminded 6 Plaintiffs of their obligation to provide their current addresses to the Clerk's Office. (ECF 7 No. 20.)

8 As noted above, Plaintiffs Shawn O'Malley, Joan Alford, James Nelson, Pam 9 Nelson, Cassandra Salinas, and Michael L. Mardell's copies of the Courts' orders have 10 been returned as undeliverable for months. Despite such returns, these Plaintiffs were 11 properly served. Pursuant to Local Rule 182(f), service of documents at the record 12 address of the party is fully effective. It is a plaintiff's responsibility to keep the Court 13 apprised of their current address at all times. It appears that Plaintiffs Shawn O'Malley, 14 Joan Alford, James Nelson, Pam Nelson, Cassandra Salinas, and Michael L. Mardell 15 have failed to comply with Local Rule 183(b), which provides that: 16 A party appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If 17 mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to 18 notify the Court and opposing parties within thirty (30) days thereafter of a current address, the Court may dismiss the 19 action without prejudice for failure to prosecute. 20 Here, the Court's orders were returned as undeliverable beginning in October 21 2024, over five months ago, and to date Plaintiffs Shawn O'Malley, Joan Alford, James 22 Nelson, Pam Nelson, Cassandra Salinas, and Michael L. Mardell have failed to notify the 23 Court of their current addresses. Nevertheless, in light of Plaintiffs' pro se status, the 24 Court first attempts lesser sanctions by issuing this order to show cause. Plaintiffs have 25 twenty-one (21) days to respond to this order to show cause and file an amended 26 complaint and provide current addresses for Plaintiffs Shawn O'Malley, Joan Alford, 27 James

Nelson, Pam Nelson, Cassandra Salinas, and Michael L. Mardell. Plaintiffs are 28 warned that the failure to file an amended complaint and/or provide current addresses 1 | within twenty-one (21) days will result in a recommendation to dismiss this action for 2 | failure to prosecute. 3 It is HEREBY ORDERED that: 4 1) All Plaintiffs have twenty-one (21) days to respond to the order to show 5 || cause and file an amended complaint; and 6 2) Plaintiffs Shawn O'Malley, Joan Alford, James Nelson, Pam Nelson, 7 || Cassandra Salinas, and Michael L. Mardell have twenty-one (21) days to provide their 8 || current addresses. 9 Plaintiffs are cautioned that failure to respond to this order will result in a 10 || recommendation to dismiss Plaintiffs' claims for failure to prosecute. 11 12 | Dated: February 27, 2025 C iy S \U
13 CHI S00 KIM
44 UNITED STATES MAGISTRATE JUDGE
15 || 4, toep2366.24 16 17 18 19 20 21 22 23 24 25 26 27 28