

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

Mathew-Allen McCaster v. Franchise Tax Board, et al.

McCaster · No. 2:24-cv-03161-TLN-SCR · Decided October 24, 2025

OPINION

Mathew-Allen McCaster v. Franchise Tax Board, et al.

PER CURIAM.

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7 UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF CALIFORNIA

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10 MATHEW-ALLEN McCASTER, No. 2:24-cv-03161-TLN-SCR

11 Plaintiff,

12 v. ORDER TO SHOW CAUSE

13 FRANCHISE TAX BOARD, et al., 14 Defendants. 15 16 Plaintiff is proceeding pro se in this
action. This matter was accordingly referred to the 17 undersigned pursuant to Local Rule 302(c)
(21). Plaintiff filed an incomplete motion for leave to 18 proceed in forma pauperis (“IFP”) (ECF
No. 2). Plaintiff was directed to supplement the motion 19 for IFP within 14 days in a June 4,
2025 Order and Findings and Recommendation (“F&R”). 20 ECF No. 6 at 8. Plaintiff was advised
that if he did not supplement the motion or pay the filing 21 fee within 14 days “the Court will
recommend the IFP motion be denied.” Id. Plaintiff did not 22 file a supplement or pay within 14
days, but 21 days later filed objections to the June 4, 2025 23 order and a declaration re: IFP
status. ECF No. 7 and 8. On July 7, 2025, Judge Nunley issued 24 an Order adopting the F&R
which directed Plaintiff to file a Second Amended Complaint 25 (“SAC”) within 21 days. Plaintiff
did not file a SAC, but instead filed a meritless motion to 26 vacate judgment (ECF No. 11). 27
//// 28 1 The Court will now direct Plaintiff to show cause why the action should not be dismissed
2 for Plaintiff’s failure to comply with Court orders. See Fed. R. Civ. P. 41(b); Local Rule 110. 3
A. In Forma Pauperis Status 4 Plaintiff filed a motion to proceed IFP (ECF No. 2), but the form
was largely left blank. 5 The Court ordered Plaintiff to supplement his motion for IFP to address
the deficiencies described 6 in the Court’s order. ECF No. 6. Plaintiff then submitted a declaration
which did not list his 7 income and expenses, but instead states he does “not receive any taxable
income as defined by 8 federal law” because Plaintiff alleges he is not subject to taxation. ECF
No. 8 at ¶ 1. He also 9 states that other “personal or tribal financial resources” have been
wrongfully seized by the 10 California Franchise Tax Board. Id. at ¶ 2. He again declares he
cannot pay the filing fee, but 11 has not provided the requested information. 12 As the Ninth

Circuit has recognized “one need not be absolutely destitute to obtain 13 benefits” of the IFP statute. *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015). 14 However, “a plaintiff seeking IFP status must allege poverty with some particularity, definiteness 15 and certainty.” *Id.* Plaintiff has provided insufficient information in support of his motion and 16 has not complied with the Court’s order to supplement the motion. Plaintiff has also not paid the 17 filing fee. Plaintiff’s action thus may not proceed. See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 18 (9th Cir. 1999) (“An action may proceed despite failure to pay the filing fees only if the party is 19 granted IFP status.”). 20 B. Failure to File a Second Amended Complaint 21 On July 7, 2025, Judge Nunley issued an Order adopting the F&R which dismissed 22 Plaintiff’s First Amended Complaint (FAC) for failure to state a claim, and further provided that 23 “Plaintiff is directed to file any Second Amended Complaint within 21 days of the date of this 24 order.” ECF No. 10 at 2. Plaintiff’s SAC was due by July 28, 2025. Plaintiff did not file a SAC, 25 but instead on July 24, 2025 filed a motion to vacate judgment citing to Federal Rule of Civil 26 Procedure 60.

27 //// 28 //// 1 The motion is improper as no judgment has been entered in this action. Plaintiff 2 complains of the Court’s July 7, 2025¹ order which granted him leave to file a SAC. The motion 3 appears to argue that the Court lacks subject matter jurisdiction and requests that action be 4 converted into one for declaratory judgment. ECF No. 11 at 4. Plaintiff argues the order should 5 be void because he did not receive it until July 10, eight days after the date it was signed, and he 6 also states that he operates on “Tribal Time.” *Id.* at 4. Plaintiff continues to assert that this Court 7 lacks jurisdiction, arguing that the Court “acted beyond its statutory and constitutional authority 8 by asserting jurisdiction over a matter falling squarely within the exclusive jurisdiction of a 9 sovereign tribal court.” *Id.* at 6. Plaintiff previously filed a “Notice of Jurisdictional Removal” 10 (ECF No. 9), in which he appears to seek the “[i]mmediate dismissal or stay of this case due to 11 lack of jurisdiction.” ECF No. 9 at 2. All of this is puzzling because Plaintiff initiated this action 12 in this Court. Plaintiff’s assertions that the Court lacks jurisdiction also run contrary to the 13 assertions he made concerning federal question jurisdiction in his initial complaint. ECF No. 1 at 14 3. If Plaintiff believes the Court lacks subject matter jurisdiction, Plaintiff is free to voluntarily 15 dismiss the action pursuant to Federal Rule of Civil Procedure 41(a)(1). 16 Plaintiff’s FAC was dismissed for failure to state a claim. ECF No. 10. Plaintiff has 17 chosen not to comply with the Court’s order to file a SAC. Plaintiff has also not complied with 18 the Court’s order to supplement his IFP motion. Instead, Plaintiff has filed a meritless motion to 19 vacate which argues the Court lacks subject matter jurisdiction over this action. 20 Good cause appearing, IT IS HEREBY ORDERED: 21 1. Plaintiff shall show cause, in writing, within 14 days, why the failure to file a 22 Second Amended Complaint and to supplement the motion to proceed IFP should not 23 result in a recommendation that this case be dismissed. 24 2. Plaintiff may respond by filing a seconded amended complaint and supplement to the 25 motion to proceed IFP in compliance with the Court’s prior orders. ECF Nos. 6 & 10. 26 3. If Plaintiff fails to respond, the court will

recommend dismissal of this case. See Fed. 27 1 Plaintiff refers to the July 2, 2025 order, as the order is dated July 2, 2025, but it was not 28 docketed until July 7, 2025 after the holiday weekend.] R. Civ. P. 41(b); Local Rule 110. 2 4. Alternatively, if Plaintiff no longer wishes to pursue this action, Plaintiff may file a 3 notice of voluntary dismissal pursuant to Rule 41 of the Federal Rules of Civil 4 Procedure. 5 SO ORDERED. 6 || DATED: October 23, 2025

SEAN C. RIORDAN

9 UNITED STATES MAGISTRATE JUDGE

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