

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Selvester v. State of California, et al.

Selvester · No. 2:24-cv-01260-DAD-DMC · Decided March 27, 2025

OPINION

Selvester v. State of CA, al

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 JOHN CASEY SELVESTER, No. 2:24-cv-01260-DAD-DMC

12 Plaintiff,

13 v. ORDER GRANTING PLAINTIFF’S MOTION

TO FILE A SECOND AMENDED

14 STATE OF CALIFORNIA, et al., COMPLAINT AND DENYING

DEFENDANTS’ MOTIONS TO DISMISS AS

15 Defendants. MOOT 16 (Doc. Nos. 12, 14, 18, 19, 43, 52, 53, 55) 17 18 19 On April 30, 2024,
plaintiff filed the complaint initiating this action. (Doc. No. 1.) 20 Various defendants
subsequently filed motions to dismiss plaintiff’s operative complaint. (Doc.

21 Nos. 12, 14, 18, 19, 43.) When plaintiff did not file oppositions or statements of non-opposition
22 to pending motions, the court ordered plaintiff to show cause why this action should not be 23
dismissed for failure to prosecute and comply with the court’s Local Rules. (Doc. No. 26.) 24
Plaintiff’s former counsel responded to the order to show cause and filed a motion seeking to 25
withdraw as counsel of record for plaintiff. (Doc. No. 30.) 26 On November 18, 2024, the court
granted plaintiff’s former counsel’s motion to withdraw 27 as counsel for plaintiff. (Doc. No. 33.)
In that order, the court granted plaintiff ninety days to 28 respond to the pending motions to
dismiss. (Id.) When plaintiff still did not comply, the court 1 issued another order to show cause.
(Doc. No. 39.) In response, on March 5, 2025, plaintiff’s 2 new counsel requested an extension of
time in which to respond to the pending motions and 3 indicated plaintiff’s intent to voluntarily
dismiss several defendants. (Doc. No. 41.) On March 4 17, 2025, the court held a status
conference to discuss plaintiff’s request in this regard. (Doc. No. 5 45.) The court granted plaintiff
one week, until March 24, 2025, to file a notice a voluntary 6 dismissal as to the defendants that
plaintiff wished to dismiss as well as a second amended 7 complaint (“SAC”). (Id.) 8 On March
19, 2025, plaintiff filed a notice of voluntary dismissal as to defendants City of 9 Red Bluff, Kevin

Busequist, and Empower Tehama. (Doc. No. 46.) The Clerk of the Court 10 subsequently terminated those defendants from the action. (Doc. No. 47.) However, plaintiff did 11 not file a SAC as required by March 24, 2025. On March 25, 2025, several remaining defendants 12 filed notices of plaintiff's failure to file a SAC. (Doc. Nos. 48, 49, 51.) Later that day, plaintiff 13 filed his SAC (Doc. No. 52)¹ as well as a "motion for leave of court to file second amended 14 complaint late" (Doc. No. 53). Plaintiff's motion requests leave of court to file his second 15 amended complaint one day late and "requests that the Court view the late filing as the product of 16 mistake and inadvertence and permit late filing in order to avoid prejudice to Plaintiff resulting 17 from Counsel's ineptitude." (Doc. No. 53 at 1–2.) The motion is also supported by a declaration 18 of plaintiff's new counsel in which she explains that she encountered technical difficulties in 19 converting the pleadings "from Word to PDF." (Doc. No. 54 at 1.) 20 The court will grant plaintiff's motion and will accept his SAC filed one day late, but 21 plaintiff and his counsel are warned that in light of the many delays in this action already, further 22 missed deadlines will not be tolerated. Further, in light of the filing of plaintiff's SAC, the 23 // 24 // 25 // 26 27 1 This item is currently mislabeled on the docket. The court directs the Clerk of the Court to correct the title of Doc. No. 52 to reflect that this entry is plaintiff's "Second Amended 28 Complaint." 1 defendants' previously filed motions to dismiss (Doc. Nos. 12, 14, 18, 19, 43) will be denied as 2 having been rendered moot.² 3 Additionally, on March 26, 2025, plaintiff filed a notice of voluntary dismissal³ of three 4 additional defendants. (Doc. No. 55.) Plaintiff requests voluntary dismissal of defendants 5 Rogers, Frost, and Growney. (Id. at 2.) The court observes that defendants Rogers and Frost 6 were previously terminated from this action on September 17, 2024. (Doc. No. 11.) 7 Accordingly, the court directs the Clerk of the Court to update the docket to reflect that defendant 8 Growney has also now been terminated from this action.

9 CONCLUSION

10 For the reasons explained above: 11 1. Plaintiff's motion to file a second amended complaint one day late (Doc. No. 53) 12 is GRANTED; 13 2. Plaintiff's second amended complaint (Doc. No. 52) is deemed the operative 14 complaint in this action; 15 3. The defendants' previously filed motions to dismiss (Doc. Nos. 12, 14, 18, 19, 43) 16 are hereby DENIED as moot in light of plaintiff's filing of the second amended 17 complaint; 18 19 2 The court acknowledges that defendant Brown has filed a notice renewing her request for attorneys' fees pursuant to her motion to dismiss on anti-SLAPP grounds. (Doc. No. 51.) 20 Defendant Brown references a case in which the undersigned previously found it appropriate to grant a request for the award of attorneys' fees incurred in bringing an anti-SLAPP motion which 21 was denied as moot after the plaintiffs were granted leave to file an amended complaint withdrawing the relevant state law claims. (Doc. No. 51 at 2) (citing *Garrett v. Hine*, No. 1:21- 22 cv-00845-DAD-BAK, 2022 WL 2067903 (E.D. Cal. June 8, 2022)). Here, however, defendant 23 Brown moved to dismiss plaintiff's negligence and defamation claims as alleged against her on anti-SLAPP grounds. (Doc. No. 43-1.) Plaintiff's SAC still brings the defamation claim against 24 defendant Brown. Accordingly, as stated at the

hearing, defendant Brown's motion to dismiss will be denied as moot but she may renew her anti-SLAPP argument in response to plaintiff's 25 SAC. 26 3 The court observes that this filing has been captioned as a "motion for voluntary dismissal" and 27 entered on the docket as a "motion to dismiss." (Doc. No. 55) The court directs the Clerk of the Court to update the title of the entry to reflect that this document should be titled "Notice of 28 Voluntary Dismissal." 1 4. The Clerk of the Court is directed to update the docket to reflect that defendant 2 Growney has been terminated from this action in light of plaintiffs notice of 3 voluntary dismissal (Doc. No. 55); and 4 5. The remaining defendants shall respond to plaintiff's second amended complaint 5 no later than twenty-one (21) days after the date of entry of this order. 6 IT IS SO ORDERED. "| Dated: _March 26, 2025 Dal A. 2, sxe

8 DALE A. DROZD

9 UNITED STATES DISTRICT JUDGE

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