

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Larry L. Tionson v. Jeffrey Macomber, et al.

No. 2:24-cv-02898-EFB (PC) · No. No. 2:24-cv-02898-EFB (PC) · Decided December 2, 2025

SUMMARY

The court recommends striking the plaintiff’s unsigned complaint and dismissing the action without prejudice because the plaintiff failed to submit a signed complaint after being ordered to do so. The document also orders the Clerk to randomly assign a district judge and advises the parties regarding objections to the findings and recommendations.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Edmund F. Brennan, United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 2, 2025
DOCKET	No. 2:24-cv-02898-EFB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A pro se state prisoner proceeding under 42 U.S.C. § 1983 failed to submit a signed complaint after the court ordered him to do so and warned that noncompliance could result in dismissal. The magistrate judge issued findings and recommendations that the unsigned complaint be stricken and the action dismissed without prejudice.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- pleadings
- civil procedure
- section 1983

PRACTICE AREAS

- civil procedure
- civil rights

QUESTIONS PRESENTED

- Whether an unsigned complaint must be stricken after the plaintiff has been given an opportunity to sign it.

2. Whether an action should be dismissed without prejudice when the plaintiff fails to submit an operative signed complaint.

HOLDINGS

1. An unsigned complaint must be stricken when the plaintiff has been given an opportunity to sign it and fails to do so.
2. The action should be dismissed without prejudice when plaintiff fails to submit a signed complaint and therefore leaves the action without an operative complaint.

KEY QUOTATIONS

“Without an operative complaint, the action should be dismissed.” (at 2)

“It is RECOMMENDED that the complaint be stricken and this action be dismissed without prejudice for failure to submit a signed complaint.” (at 2)

FACTUAL BACKGROUND

Plaintiff Larry L. Tionson, a state inmate proceeding without counsel, brought an action under 42 U.S.C. § 1983. The court directed him to submit a signed complaint within 30 days and expressly warned that failure to do so would lead to a recommendation of dismissal. The deadline passed without a signed complaint or other response.

PROCEDURAL HISTORY

The court previously ordered plaintiff to file a signed complaint within 30 days. Plaintiff did not file a signed complaint or otherwise respond. The magistrate judge ordered the clerk to randomly assign a district judge and recommended striking the complaint and dismissing the action without prejudice, subject to objections under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- West v. Hulbert, No. 1:16-CV-00046-DAD, 2016 U.S. Dist. LEXIS 64378, at *1 (E.D. Cal. May 16, 2016)
- Anderson v. Krpan, No. 1:14-CV-01380-AWWI, 2015 U.S. Dist. LEXIS 11412, at *5 (E.D. Cal. Jan. 29, 2015)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

Macomber

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 LARRY L. TIONSON, No. 2:24-cv-02898-EFB (PC)

12 Plaintiff,

13 v. ORDER AND FINDINGS AND

RECOMMENDATIONS

14 JEFFREY MACOMBER, et al., 15 Defendants. 16 Plaintiff, a state inmate, proceeds without
counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court
by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). 19 On September 5, 2025, the court
ordered plaintiff to submit a signed complaint within 30 20 days. ECF No. 7. The order warned
plaintiff that failure to submit a signed complaint would lead 21 to a recommendation that the case
be dismissed. The time for acting has now passed and plaintiff 22 has not filed a signed complaint
or otherwise responded to the court's order. 23 The Federal Rules of Civil Procedure require an
operative complaint. Fed. R. Civ. P. 3 24 ("A civil action is commenced by filing a complaint with
the court."). A complaint that is not 25 signed after a party has been given an opportunity to do so
must be stricken. Fed. R. Civ. P. 26 11(a); *West v. Hulbert*, No. 1:16-CV-00046-DAD, 2016 U.S.
Dist. LEXIS 64378, at *1 (E.D. Cal. 27 May 16, 2016) ("Because the Court cannot consider
unsigned filings, the complaint must be 28 1 | stricken"); *Anderson v. Krpan*, No. 1:14-CV-01380-
AWWI, 2015 U.S. Dist. LEXIS 11412, at *5 2 | (E.D. Cal. Jan. 29, 2015) (same). Thus, plaintiff's
unsigned complaint must be stricken. 3 Without an operative complaint, the action should be
dismissed. See *Ferdik v. Bonzelet*, 4 | 963 F.2d 1258, 1262 (9th Cir. 1992). 5 Accordingly, it is
ORDERED that the Clerk of Court randomly assign a district judge to 6 || this action. It is
RECOMMENDED that the complaint be stricken and this action be dismissed 7 || without
prejudice for failure to submit a signed complaint. Fed. R. Civ. P. 11(a). 8 These findings and
recommendations are submitted to the United States District Judge 9 || assigned to the case,
pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 10 || after being served
with these findings and recommendations, any party may file written 11 || objections with the court
and serve a copy on all parties. Such a document should be captioned 12 || "Objections to
Magistrate Judge's Findings and Recommendations." Any response to the 13 || objections shall be
served and filed within fourteen days after service of the objections. The 14 | parties are advised
that failure to file objections within the specified time may waive the right to 15 || appeal the
District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez* 16 | v. *Yist*,
951 F.2d 1153 (9th Cir. 1991). 17 18 || Dated: December 2, 2025 _ittidl Hema

EDMUND F. BRENNAN

19 UNITED STATES MAGISTRATE JUDGE

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