

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Alvarez v. Harder Mechanical Contractors

Alvarez · No. 1:23-cv-1162 JLT BAM · Decided July 31, 2025

OPINION

Alvarez v. Harder Mechanical Contractors

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 SERGIO ALVAREZ, Case No. 1:23-cv-1162 JLT BAM 12 Plaintiff, ORDER ADOPTING
FINDINGS AND

RECOMMENDATIONS, DISMISSING THE

13 v. ACTION WITHOUT PREJUDICE, AND

DIRECTING THE CLERK OF COURT TO

14 HARDER MECHANICAL CLOSE THE CASE

CONTRACTORS,

15 (Doc. 19) Defendant. 16 17 Sergio Alvarez is proceeding pro se in this this civil action against
Harder Mechanical 18 Contractors. (Doc. 1.) The magistrate judge screened Plaintiff's amended
complaint and found 19 Plaintiff failed to comply with the pleading requirements of Federal Rules
of Civil Procedure 8 20 and 10, failed to adequately allege this Court's jurisdiction, and failed to
state a cognizable claim 21 for relief. (Doc. 17.) The Court provided Plaintiff with the relevant
pleading and legal 22 standards—based upon the limited allegations—and granted him one final
opportunity to amend 23 to state a cognizable claim. (Id. at 2-7.) The magistrate judge advised
Plaintiff that if he failed to 24 file an amended complaint, the Court would recommend dismissal
with prejudice for failure to 25 obey a court order and for failure to state a claim upon which relief
may be granted. (Id. at 8.) 26 Plaintiff responded to the Court order by stating the 30-day deadline
was “not fair” given the time 27 it took the Court to screen his prior pleadings. (Doc. 18.)
However, he did not indicate an 28 inability to comply with the deadline or seek an extension of
time. 1 After Plaintiff did not file a second amended complaint, the magistrate judge issued 2
Findings and Recommendations, recommending the Court dismiss the action. (Doc. 10.) The 3
magistrate judge reiterated the prior findings that Plaintiff failed to allege facts sufficient to 4
invoke this Court's jurisdiction or state a cognizable claim. (Id. at 3-8.) The magistrate judge 5
also found terminating sanctions were appropriate for failure to comply with the Court's 6
Screening Order, after considering the factors identified by the Ninth Circuit in Henderson v. 7

Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986). (Id. at 8-9.) Therefore, the magistrate judge recommended dismissal “based on Plaintiff’s failure to obey the Court’s order, failure to establish this Court’s jurisdiction, and for failure to state a cognizable claim.” (Id. at 9.) Plaintiff filed a timely response to the Findings and Recommendations. Plaintiff reiterates that he filed a case with the EEOC, which informed Plaintiff that he could file a court case. (Doc. 12 20 at 1.) Plaintiff also attaches exhibits that he previously filed in this action concerning the termination of his employment. (Id. at 2-3.) However, Plaintiff does not dispute—or even acknowledge—the specific findings of the magistrate judge that Plaintiff failed to state a cognizable claim, did not state a claim that invokes this Court’s jurisdiction, and failed to comply with the Court’s order to file a second amended complaint. (See id.) The attached exhibits do not undermine the findings of the magistrate judge. Thus, Plaintiff’s objections are unavailing. According to 28 U.S.C. § 636 (b)(1), this Court performed a de novo review of the case. Having carefully reviewed the entire matter, including Plaintiff’s objections, the Court finds the Findings and Recommendations are supported by the record and proper analysis. However, given the findings that the Court lacks diversity and subject matter jurisdiction, dismissal without prejudice is appropriate. See *Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034, 1036 (9th Cir. 2004) (“because the district court lacked subject matter jurisdiction, the claims should have been dismissed without prejudice”); *Anrig v. Ringsby United*, 603 F.2d 1319, 1327 (9th Cir. 1978) (indicating dismissal for lack of diversity jurisdiction should be without prejudice). Thus, the Court ORDERS: 1. The Findings and Recommendations issued on July 15, 2025 (Doc. 19) are ADOPTED. 2. This action is DISMISSED without prejudice. 3. The Clerk of Court is directed to close this case. 4 IT IS SO ORDERED. 5 Dated: _ July 31, 2025 Cerin | Tower
TED STATES DISTRICT JUDGE

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