

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jones v. CDCR

Jones · No. 1:24-cv-01298-KES-BAM · Decided August 15, 2025

OPINION

(PC) Jones v. C.D.C.R.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 EUGENE JONES, Case No. 1:24-cv-01298-KES-BAM 12 Plaintiff, ORDER VACATING
FINDINGS AND

RECOMMENDATIONS TO DISMISS

13 v. ACTION, WITH PREJUDICE, FOR FAILURE

TO STATE A CLAIM, FAILURE TO OBEY

14 CDCR, et al., COURT ORDER, AND FAILURE TO

PROSECUTE

15 Defendants. (ECF No. 34) 16 17 18 Plaintiff Eugene Jones is a state prisoner proceeding pro se
and in forma pauperis in this 19 civil rights action pursuant to 42 U.S.C. § 1983. 20 On May 16,
2025, the Court screened Plaintiff's first amended complaint filed May 6, 21 2024, and issued
findings and recommendations that this action be dismissed based on Plaintiff's 22 failure to state
a cognizable claim upon which relief may be granted. (ECF No. 29.) Those 23 findings and
recommendations were served on Plaintiff and contained notice that any objections 24 thereto
were to be filed within fourteen (14) days after service. (Id.) Following the Court's order 25
striking Plaintiff's unsigned June 4, 2025 filing and granting Plaintiff an extension of time to 26
resubmit his objections, Plaintiff timely filed signed objections to the findings and 27
recommendations on June 20, 2025. (ECF Nos. 30-32.) 28 /// 1 On June 26, 2025, the Court
construed Plaintiff's objections as a motion for leave to file a 2 second amended complaint. (ECF
No. 33.) The Court therefore vacated the findings and 3 recommendations issued on May 16, 2025
(ECF No. 29), granted Plaintiff leave to amend, and 4 ordered Plaintiff to file a second amended
complaint, limited to Plaintiff's claim for excessive 5 force against Defendant John Doe #1 and
Plaintiff's claim for failure to protect against 6 Defendant John Doe #2, within thirty days after
service. (ECF No. 33 at 4) (emphasis in 7 original). Plaintiff's second amended complaint was due
on or before July 29, 2025. 8 On August 13, 2025, after Plaintiff failed to file a second amended
complaint, the Court 9 issued findings and recommendations to dismiss this action, with prejudice,

for failure to state a 10 claim pursuant to 28 U.S.C. § 1915A, for failure to obey a court order, and for Plaintiff's failure 11 to prosecute. (ECF No. 34.) 12 On August 14, 2025, Plaintiff filed a second amended complaint, which is signed and 13 dated July 12, 2025. (ECF No. 35.) Applying the mailbox rule, Plaintiff's second amended 14 complaint is timely.¹ The Court therefore finds it appropriate to vacate the pending findings and 15 recommendations. 16 Accordingly, the findings and recommendations issued on August 13, 2025, (ECF No. 17 34), are HEREBY VACATED. Plaintiff's second amended complaint, filed August 14, 2025, 18 will be screened in due course. 19 IT IS SO ORDERED. 20 21 Dated: August 15, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE

22 23 24 25 1 Under the prison mailbox rule, a pleading filed by a pro se prisoner is deemed to be filed as of the date the prisoner delivered it to prison authorities for mailing to the court clerk. See *Houston v. Lack*, 487 U.S. 26 266, 270 (1988); *Douglas v. Noelle*, 567 F.3d 1103, 1107–09 (9th Cir. 2009) (mailbox rule articulated in *Houston* applies to civil rights actions). Plaintiff's second amended complaint lacks a proof of service, but 27 it is signed and dated July 12, 2025 (ECF No. 35 at 10), so the Court will deem it filed on that date. *Butler v. Long*, 752 F.3d 1177, 1178 n. 1 (9th Cir. 2014) (“We assume that [petitioner] turned his petition over to 28 prison authorities on the same day he signed it and apply the mailbox rule.”).