

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

Rosner v. Wellpath

No. 1:24-cv-01145-KES-SAB (PC), United States District Court for the Eastern District of California (April 10,
2025)

OPINION

(PC) Rosner v. Wellpath

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 JESSIE ROSNER, No. 1:24-cv-01145-KES-SAB (PC)

12 Plaintiff, FINAL ORDER GRANTING PLAINTIFF'S

FOURTH MOTION FOR EXTENSION OF

13 v. TIME TO FILE AN AMENDED

COMPLAINT

14 WELLPATH, et al., (ECF Nos. 16, 17) 15 Defendants. 16 17 Plaintiff is proceeding pro se and
in forma pauperis in this action filed pursuant to 42 18 U.S.C. § 1983. 19 Currently before the
Court is Plaintiff's fourth motion for an extension of time to file an 20 amended complaint, filed
April 1, 2025. (ECF No. 17.) This case has a lengthy history based on 21 Plaintiff's repeated
failure to comply with Court's October 31, 2024, screening order. 22 I. 23

BACKGROUND

24 To recap, Plaintiff filed the instant complaint on September 26, 2024. (ECF No. 1.) 25 On
October 31, 2024, the Court screened the complaint, found that Plaintiff failed to state a 26
cognizable claim for relief, and granted Plaintiff thirty days to file an amended complaint. (ECF
27 No. 7.) 28 1 Plaintiff failed to file an amended complaint or otherwise respond to the October
31, 2024 2 order. Therefore, on January 7, 2025, the Court issued an order for Plaintiff to show
cause why 3 the action should not be dismissed. (ECF No. 11.) On January 23, 2025, Plaintiff
filed a motion 4 for an extension of time to file an amended complaint. (ECF No. 12.) On January
24, 2025, the 5 Court discharged the order to show cause and granted Plaintiff thirty days to file
an amended 6 complaint. (ECF No. 13.) After Plaintiff again failed to file an amended complaint,
the Court 7 ordered Plaintiff to show cause why the action should not be dismissed. (ECF No. 14.)
Plaintiff 8 failed to respond to March 6, 2025, order to show cause. Therefore, on April 1, 2025,
the Court 9 issued Findings and Recommendations recommending the action be dismissed for
failure to 10 prosecute, failure to comply with a court order, and failure to state a cognizable claim

for relief. 11 (ECF No. 16.) 12 Plaintiff now seeks a fourth extension of time to file an amended complaint and a copy of 13 the screening order, which was deemed filed one day after the Findings and Recommendations 14 were issued. (ECF No. 17.) 15 II.

16 DISCUSSION

17 For good cause shown, a court may grant an extension of time “if a request is made, 18 before the original time or its extension expires” or, if made after the time has expired, the party 19 shows excusable neglect. Fed. R. Civ. P. 6(b)(1)(A), (B). To determine whether missing a 20 deadline constitutes excusable neglect, the Ninth Circuit applies the factors set forth in *Pioneer* 21 *Inv. Serv. Co. v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera* 22 *Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997). The factors include: (1) the danger of 23 prejudice to the non-moving party (here, the plaintiff), (2) the length of delay and its potential 24 impact on judicial proceedings, (3) the reason for the delay, including whether it was within the 25 reasonable control of the movant, and (4) whether the moving party acted in good faith. *Pioneer*, 26 507 U.S. at 395. The weighing of *Pioneer*’s equitable factors is left to the discretion of the court. 27 *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir. 2004). 28 Here, Plaintiff’s motion was filed after the deadline to file an amended complaint and is 1 not supported by excusable neglect. Indeed, the motion consists of one sentence in which 2 Plaintiff seeks a copy of the screening order and an additional thirty days to file an amended 3 complaint. (ECF No. 17.) This Plaintiff’s fourth request for an extension of time to file an 4 amended complaint, which was initially due approximately three months, and Plaintiff has 5 repeatedly failed to timely seek an extension of the deadline or file an amended complaint. 6 Plaintiff has previously been warned that his failure to file an amended complaint or comply with 7 a court order will result in dismissal of the action. (See ECF Nos. 7, 11, 14.) Plaintiff is advised 8 a case cannot linger on this Court’s already overburdened docket, awaiting Plaintiff’s filing of an 9 amended complaint, and his repeated failure to file an amended complaint is tantamount to a 10 failure to prosecute which may support a finding of bad faith. Nonetheless, because no Defendant 11 has appeared there is no prejudice and only a thirty day extension is sought, the Court will grant 12 Plaintiff one last extension of time to file an amended complaint and make a one-time exception 13 to send him a copy of the Court’s October 31, 2024, screening order.¹ However, no further 14 extension of time will be granted for this purpose, and Plaintiff is warned that failure to comply 15 with this order will result in a recommendation of dismissal of the action. 16 III.

17 ORDER

18 Based on the foregoing, it is HEREBY ORDERED that: 19 1. Plaintiff motion for an extension of time (ECF No. 17) is GRANTED; 20 2. Plaintiff is granted thirty (30) days from the date of service of this order to file an 21 amended complaint; 22 3. If Plaintiff timely complies with this order by filing an amended complaint, 23 undersigned will vacate and/or amend the April 1, 2025 Findings and 24 Recommendation; and 25 1 Plaintiff is advised that he is not entitled to free copies from the court. The Clerk charges \$.50 per page for copies of documents. See 28 U.S.C. §

1914(a). Copies of up to twenty pages may be made by the Clerk's Office at this 26 court upon written request and prepayment of the copy fees. Under 28 U.S.C. § 2250, the Clerk is not required to furnish copies without cost to an indigent petitioner except by order of the judge. To request copies of his Complaint 27 at this juncture, Plaintiff must submit a request in writing to the Clerk, a large self-addressed envelope affixed with sufficient postage, and prepayment of copy costs to the Clerk. 28 1 4. If Plaintiff does not timely comply with this order, the Court will not vacate the

2 April 1, 2025 Findings and Recommendation and the Findings and

3 Recommendation will be deemed submitted for consideration by the district court 4 without further notice. 5

6 IT IS SO ORDERED. FA. Se

7 || Dated: _ April 9, 2025

STANLEY A. BOONE

8 United States Magistrate Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28