

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

Frank Orlando Wells v. Jeffery Macomber, et al.

Wells v. Macomber · No. 2:25-cv-0521 CSK P · Decided November 25, 2025

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 FRANK ORLANDO WELLS, No. 2:25-cv-0521 CSK P

12 Plaintiff, 13 v. ORDER 14 JEFFERY MACOMBER, et al., 15 Defendants. 16 17 Plaintiff is a
state prisoner proceeding pro se with a civil rights complaint under 42 U.S.C. 18 § 1983.
Plaintiff’s motion to reinstate default judgment and strike defendants’ waiver, and 19 defendants’
motion to opt out of the Post Screening ADR Project are before the Court. 20 As discussed below,
plaintiff’s motion is denied, and defendants’ motion to opt out is 21 granted. In addition, plaintiff’s
complaint is dismissed with leave to amend.

22 I. BACKGROUND

23 On September 11, 2025, the Court screened plaintiff’s complaint and ordered service on 24
defendants. (ECF No. 8.) On October 6, 2025, defendants filed a notice of intent to waive 25
service. (ECF No. 13.) On October 8, 2025, plaintiff filed a motion for default judgment. (ECF
26 No. 14.) On October 15, 2025, the Court denied, without prejudice, plaintiff’s motion for
default

27 judgment. (ECF No. 15.) On October 31, 2025, defendants filed their waiver of service. (ECF
28 No. 16.)

1 On November 3, 2025, plaintiff filed a document styled, “Objections to Denial of 2 Judgment of
Default and Motion to Reinstate Judgment of Default Request, and Motion to Strike 3
Defendants’ Waiver of Service as Dilatory and Improper.” (ECF No. 17.) 4 On November 5, 2025,
the Court referred this case to the Post Screening ADR Project and 5 stayed the case for 120 days.
(ECF No. 18.) On November 14, 2025, defendants filed a motion 6 to opt out of the Post
Screening ADR Project.

7 II. GOVERNING AUTHORITIES

8 Local Rule 230(j) provides that a party seeking reconsideration shall set forth the material 9
facts and circumstances surrounding the motion for which reconsideration is sought, including: 10

“what new or different facts or circumstances are claimed to exist which did not exist or were not shown upon such prior motion, or what other grounds exist for the motion;” and “why the facts or circumstances were not shown at the time of the prior motion.” Local Rule 230(j).

13 III. PLAINTIFF’S MOTION

14 The Court construes plaintiff’s filing as a motion for reconsideration of the Court’s
15 October 15, 2025 order. Local Rule 230(j). Although plaintiff objects to the waiver process the
16 Court uses to expedite service of process in cases filed by prisoners held in state custody,
17 plaintiff fails to show that he was entitled to entry of Clerk’s default.¹ At the time plaintiff filed
18 his motion for default judgment, defendants had indicated their intent to waive service and
19 avoid the time and expense of requiring the U.S. Marshal to serve them. (ECF No. 13.) Thus,
20 under Rule 20 55(a), defendants were entitled to fourteen days’ written notice before plaintiff filed
21 his motion, and plaintiff was required to provide proof that such notice was given. Fed. R. Civ.
22 P. 55(a). Plaintiff provided a proof of service, but it did not reflect that defendants were
23 provided fourteen days’ notice before plaintiff filed his motion. (ECF No. 14 at 3.) Further,
24 defendants filed their waiver of service on October 31, 2025, before the Court received
25 plaintiff’s motion for reconsideration containing plaintiff’s objections. The waiver 26 27 1
28 Although plaintiff points out that Rule 4(d)(1) provides that plaintiffs may notify defendants of the
29 commencement of an action and request that the defendant waive service of a summons, Rule 28
30 4(d) does not prohibit the Court from doing so. 1 provided defendants sixty days from October 6,
31 2025, to file a responsive pleading. (ECF No. 2 16.) Because the deadline for filing a responsive
32 pleading had not run by November 14, 2025, the 3 date plaintiff filed his motion for
33 reconsideration and objections, the entry of Clerk’s default 4 remained inappropriate. Fed. R. Civ.
34 P. 4(d), 12. The entry of default by the Clerk is required 5 before plaintiff may seek default
35 judgment. Fed. R. Civ. P. 55(a). Subsequently, the action was 6 stayed on November 5, 2025,
36 which relieved defendants of their obligation to file a responsive 7 pleading until the stay was
37 lifted. (ECF No. 18.) The Court finds that any alleged delay incurred 8 by the Court’s use of the
38 waiver process is not relevant to whether plaintiff was entitled to default 9 judgment. Therefore,
39 plaintiff’s objections are overruled. 10 Importantly, it is well-established that policies favor
40 resolution of cases on their merits 11 and generally disfavor default judgments. See *United States*
41 *v. Signed Pers. Check No. 730 of 12 Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010)
42 (“Crucially, . . . judgment by default is a 13 drastic step appropriate only in extreme
43 circumstances; a case should, whenever possible, be 14 decided on the merits”) (citations and
44 quotation marks omitted); *Westchester Fire Ins. Co. v. 15 Mendez*, 585 F.3d 1183, 1189 (9th Cir.
45 2009) (“As a general rule, default judgments are 16 disfavored; cases should be decided upon their
46 merits whenever reasonably possible”). 17 The Court finds that plaintiff failed to show new or
47 different facts or circumstances 18 support reconsideration of the October 15, 2025 order. Local
48 Rule 230(j). Therefore, plaintiff’s 19 motion (ECF No. 17) is denied in its entirety.

20 IV. DEFENDANTS’ MOTION

21 On November 14, 2025, both defendants filed a motion to opt out of the referral to the 22 Court's Post-Screening Early ADR ("Alternative Dispute Resolution"). (ECF No. 19.) After 23 reviewing defendants' motion, and good cause appearing, defendants' motion is granted, and the 24 stay of this action (ECF No. 18) is lifted.

25 V. LEAVE TO AMEND

26 In the motion to opt out, defense counsel points out that plaintiff sued both defendants in 27 their official capacity, and when counsel spoke with plaintiff and informed him of their position 28 that they are immune from this action under the Eleventh Amendment, plaintiff agreed to amend 1 the complaint to sue defendants in their individual capacities. The parties agreed that ADR is 2 premature until plaintiff amends the complaint. 3 Defendants are correct that claims for damages against the state, its agencies, or its 4 officers for actions performed in their official capacities are barred under the Eleventh 5 Amendment, unless the state waives its immunity. See *Kentucky v. Graham*, 473 U.S. 159, 169 6 (1985). Section 1983 does not abrogate the states' Eleventh Amendment immunity from suit. 7 See *Quern v. Jordan*, 440 U.S. 332, 344-45 (1979); see also *Hafer v. Melo*, 502 U.S. 21, 30 8 (1991) (clarifying that the Eleventh Amendment does not bar suits against state officials sued in 9 their individual capacities, nor does it bar suits for prospective injunctive relief against state 10 officials sued in their official capacities). Therefore, plaintiff's complaint is dismissed, and 11 plaintiff is granted leave to file an amended complaint naming defendants in their individual 12 capacity. Plaintiff is advised that this order relieves defendants of their obligation to file a 13 responsive pleading until plaintiff files an amended complaint and the Court screens the amended 14 complaint under 28 U.S.C. § 1915A.

15 VI. MOTION TO AMEND

16 On November 19, 2025, plaintiff filed a motion to amend the complaint, along with a 17 "Proposed First Amended Complaint." (ECF Nos. 20, 21.) However, neither of these documents 18 were signed by plaintiff. Parties proceeding without counsel are required to sign all pleadings, 19 motions, and other papers submitted to the court for filing. Fed. R. Civ. P. 11(a). In addition, 20 plaintiff's "Proposed First Amended Complaint" is not a true complaint, but rather plaintiff's 21 description of how he intends to amend, and his request for an extension of time to file an 22 amended complaint. (ECF No. 21.) Ordinarily, the Court would require plaintiff to refile his 23 documents bearing his signatures. However, in light of this order dismissing plaintiff's complaint 24 and granting him leave to amend, plaintiff does not need to re-file his motion to amend, and no 25 longer needs an extension of time to amend. Therefore, the Court disregards plaintiff's unsigned 26 motion to amend and proposed first amended complaint. (ECF Nos. 20, 21.) 27 /// 28 ///

1 | VII. CONCLUSION

2 Accordingly, IT IS HEREBY ORDERED that: 3 1. Plaintiff's motion (ECF No. 17), construed as a motion for reconsideration, is denied. 4 2. Defendants' motion to opt out (ECF No. 19) is granted. 5 3. The Court's stay of this action (ECF No. 18) is lifted. 6 4. Plaintiffs complaint is

dismissed. 7 5. Within thirty days from the date of this order, plaintiff shall complete the attached
8 Notice of Amendment and submit the following documents to the court: 9 a. The completed
Notice of Amendment; and 10 b. An original of the Amended Complaint. 11 | Plaintiffs amended
complaint shall comply with the requirements of the Civil Rights Act, the 12 || Federal Rules of
Civil Procedure, and the Local Rules of Practice. The amended complaint must 13 || also bear the
docket number assigned to this case and must be labeled "Amended Complaint." 14 | Failure to
file an amended complaint in accordance with this order may result in the dismissal of 15 || this
action. 16 6. Plaintiff's November 19, 2025 motion to amend and proposed first amended
complaint 17 | (ECF Nos. 20, 21), which are unsigned, are disregarded. 18 19 | Dated: November
24, 2025 A aA Aan Spe |

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71 UNITED STATES MAGISTRATE JUDGE

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7 UNITED STATES DISTRICT COURT

8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9

FRANK ORLANDO WELLS, No. 2:25-cv-0521 CSK P

10 Plaintiff, 11 v.

12 NOTICE OF AMENDMENT

JEFFERY MACOMBER, et al., 13 Defendants. 14 15 Plaintiff submits the following document in
compliance with the court's order 16 filed on _____ (date). 17 18 Amended Complaint

19 (Check this box if submitting an Amended Complaint) 20 DATED: 21
_____ Plaintiff 22 23 24 25 26 27 28