

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

Damon Bentley Franklin v. E. Webb

Franklin v. Webb · No. 2:23-CV-1140-DMC-P · Decided June 10, 2025

OPINION

(PC) Franklin v. E. Webb

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 DAMON BENTLEY FRANKLIN, No. 2:23-CV-1140-DMC-P

12 Plaintiff, 13 v. ORDER 14 E. WEBB, and 15 Defendant. FINDINGS AND

RECOMMENDATIONS 16 17 Plaintiff, a prisoner proceeding pro se, brings this civil action.

Pending before the 18 Court are: (1) Defendant's motion for terminating sanctions, ECF No. 39;

(2) Defendant's motion 19 to compel responses to written discovery, ECF No. 40; and (3)

Defendant's motion for an order 20 staying outstanding discovery deadlines, ECF No. 41. 21 In

Defendant's motion for terminating sanctions, Defendant states that such 22 sanctions are

warranted for Plaintiff's failure to attend his deposition as previously ordered by 23 this Court.

See ECF No. 39. On July 3, 2024, Defendant served on Plaintiff a notice of 24 Plaintiff's

deposition to occur on September 5, 2024. See ECF No. 30, pg. 6. Plaintiff refused to 25 appear.

See id. On October 25, 2024, Defendant filed a motion to compel Plaintiff's attendance 26 at his

deposition. See ECF No. 30. Plaintiff did not file an opposition. On December 13, 2024, 27 the

Court issued an order granting Defendant's unopposed motion and directed Plaintiff to appear 28

at his properly noticed deposition within 60 days. See ECF No. 33. On February 11, 2024, the 1

Court granted Defendant's motion to extend the deadline for completion of Plaintiff's deposition 2

to April 12, 2025. See ECF No. 35. On February 27, 2025, mail directed to Plaintiff 3

(specifically, the February 11, 2024, order) was returned undelivered with the notation "refused."

4 In the pending motion for terminating sanctions, Defendants indicate that they 5 noticed

Plaintiff's deposition to occur on April 2, 2025. See ECF No. 39, pgs. 4-5. While 6 Plaintiff

appeared on April 2, 2025, and agreed to go on the record, Plaintiff repeatedly obstructed 7 the

questioning and, after 30 minutes, unilaterally terminated the deposition. See id. at 5. Based 8 on

this procedural history, Defendant now moves for terminating sanctions. See ECF No. 39. 9

Plaintiff has not filed an opposition to Defendant's motion. 10 The court must weigh five factors

before imposing terminating sanctions. See 11 *Bautista v. Los Angeles County*, 216 F.3d 837, 841

(9th Cir. 2000); *Malone v. U.S. Postal 12 Service*, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in 13 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of 14 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits; 15 and (5) the availability of less drastic sanctions. See *id.*; see also *Ghazali v. Moran*, 46 F.3d 52, 16 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate 17 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See *Malone*, 18 833 F.2d at 132-33 & n.1. Terminating sanctions are authorized under Federal Rule of Civil

19 Procedure 37 for violation of a Court order related to discovery. See Fed. R. Civ. P. 37(b)(2)(v). 20 Here, the Court finds that terminating sanctions are appropriate. Plaintiff's refusal 21 to attend and complete his deposition as previously ordered thwarts the public's interest in 22 expeditious resolution of this case on the merits. Plaintiff's non-compliance with the Court's 23 prior order also prejudices Defendant's ability to defend in this action. Finally, given Plaintiff's 24 pro se and indigent status, less drastic sanctions are insufficient. In this regard, the Court notes 25 that Plaintiff has been repeatedly warned throughout this litigation that failure to comply with this 26 Court's orders may result in dismissal of the action. 27 / / / 28 / / /] Based on the foregoing, the undersigned orders and recommends as follows: 2 1. It is ORDERED that the Clerk of the Court is directed to randomly assign a 3 || District Judge to this case. 4 2. It is ORDERED that Defendant's motion to stay outstanding case 5 || deadlines, ECF No. 41, is granted pending final ruling by the assigned District Judge on 6 || Defendant's motion for terminating sanctions. 7 3. It is RECOMMENDED that Defendant's unopposed motion for 8 | terminating sanctions, ECF No. 39, be granted and that this action be dismissed without prejudice 9 | for lack of prosecution and failure to comply with court rules and orders. 10 4. It is RECOMMENDED that Defendant's motion to compel responses to 11 || written discovery, ECF No. 40, be denied as moot. 12 These findings and recommendations are submitted to the United States District 13 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 14 | after being served with these findings and recommendations, any party may file written objections 15 || with the Court. Responses to objections shall be filed within 14 days after service of objections. 16 || Failure to file objections within the specified time may waive the right to appeal. See *Martinez v. 17 Yist*, 951 F.2d 1153 (9th Cir. 1991). 18 19 | Dated: June 9, 2025 Co

20 DENNIS M. COTA

7] UNITED STATES MAGISTRATE JUDGE

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