

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Castro v. Gipson

Castro v. Gipson · No. 3:24-cv-0789-DMS-DEB · Decided March 24, 2025

OPINION

Castro v. Gipson

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 DENNIS CASTRO, Case No.: 3:24-cv-0789-DMS-DEB

CDCR #V33841,

12

ORDER DISMISSING CIVIL

Plaintiff,

13 ACTION FOR FAILING TO STATE

vs. A CLAIM AND FAILING TO

14

PROSECUTE

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CONNIE GIPSON, J. HILL, AMADOR,

16 D. EUSTAQUIO, SEGOVIA, WINGO,

SURKHI, M. VILORIA, GONZALEZ, J. 17

MOECKLY, H. MOSELEY, W. SMITH,

18 Defendant. 19

20 On May 1, 2024, Plaintiff Dennis Castro, a prisoner confined R. J. Donovan 21 Correctional
Facility and proceeding pro se, filed a civil rights action pursuant to 42 U.S.C. 22 § 1983. ECF
No. 1. After the Court initially dismissed the action for failure to satisfy the 23 filing fee
requirement, Plaintiff filed a motion to proceed in forma pauperis (“IFP”) and 24 the case was
reopened. On September 6, 2024, the Court granted Plaintiff’s IFP motion 25 and sua sponte
dismissed the Complaint in its entirety for failure comply with Federal Rule 26 of Civil Procedure
8 and failure to state a claim. ECF No. 7. 27 In the same order, the Court informed Plaintiff of the
pleading deficiencies of his 28 complaint and the granted him leave amended it within 45 days. Id.
at 6–14. Plaintiff was 1 informed that if he failed to timely amend, the Court would enter a final
judgment of 2 || dismissal based on his failure to state a claim and his failure to prosecute in

compliance 3 || with the court order requiring amendment. *Jd.* at 14 (citing *Lira v. Herrera*, 427 F.3d 1164, A || 1169 (9th Cir. 2005) (“If a plaintiff does not take advantage of the opportunity to fix his 5 || complaint, a district court may convert the dismissal of the complaint into dismissal of the 6 || entire action.”)). 7 The time for Plaintiff to respond to the Court’s order has long passed and the Court 8 ||has received no communication from Plaintiff. The failure of the plaintiff eventually to 9 ||respond to the court’s ultimatum—either by amending the complaint or by indicating to the 10 || court that [he] will not do so—is properly met with the sanction of a Rule 41(b) dismissal.” 11 || *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004); *Henderson v. Duncan*, 779 12 || F.2d 1421, 1423 (9th Cir. 1986) (the Court has discretion to sua sponte dismiss a case for 13 || lack of prosecution or failure to comply with a court order): see also Fed. R. Civ. P. 41(b) 14 || (providing for involuntary dismissal for failure to prosecute or comply with the federal 15 or court order).

16 CONCLUSION AND ORDER

17 The Court DISMISSES this civil action in its entirety based on Plaintiff's failure to 18 || state a plausible § 1983 claim and his failure to prosecute this action. The Court DIRECTS 19 || the Clerk to enter a final judgment of dismissal and close the file. 20 IT IS SO ORDERED. 21 Dated: March 24, 2025 22 =n Yn: LAN 23 Hon. Dana M. Sabraw United States District Judge 25 26 27 28 2