

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Noah Shumate v. Thomas McKenzie, et al.

No. CV 24-6532 FMO (SSCx) (C.D. Cal. Dec. 22, 2025) · No. CV 24-6532 FMO (SSCx) · Decided December 22, 2025

SUMMARY

The United States District Court for the Central District of California granted plaintiff one final opportunity to file a Second Amended Complaint after previously dismissing the First Amended Complaint with leave to amend. The court set a January 16, 2026 deadline for the Second Amended Complaint, a January 30, 2026 deadline for defendants’ response, and excused the parties from the meet-and-confer requirement for any motion to dismiss.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Fernando M. Olguin
JURISDICTION	United States District Court for the Central District of California
DECIDED	December 22, 2025
DOCKET	CV 24-6532 FMO (SSCx)
DISPOSITION	other
PROCEDURAL POSTURE	After granting defendants' motion to dismiss in part and dismissing the First Amended Complaint with leave to amend, the court issued an order addressing plaintiff's request for an extension and directing the further pleading schedule.
PRECEDENTIAL VALUE	Unknown
PARTIES	Noah Shumate v. Thomas McKenzie, et al.

TOPICS

- motions to dismiss
- pleadings
- motion to amend
- civil procedure

PRACTICE AREAS

- civil procedure
- federal civil litigation

QUESTIONS PRESENTED

1. Whether plaintiff should receive an additional opportunity and extension of time to file a Second Amended Complaint after the deadline established in the court's prior dismissal order.
2. What filing or response would avoid dismissal under Federal Rule of Civil Procedure 41(b) after dismissal of the First Amended Complaint with leave to amend.

HOLDINGS

1. The court granted plaintiff one final opportunity to file a Second Amended Complaint, extending the deadline to January 16, 2026, and stated that no further extensions would be granted.
2. To avoid dismissal under Federal Rule of Civil Procedure 41(b) following dismissal of a complaint with leave to amend, a plaintiff must file an amended complaint or a notice stating that the plaintiff will stand on the dismissed complaint.

KEY QUOTATIONS

“plaintiff must file an amended complaint or a notice that he will stand on the dismissed complaint” (1)

“cautioned that failure to timely file a Second Amended Complaint or Notice of Intent shall result in this action being dismissed for failure to prosecute and failure to comply with a court order.” (1)

FACTUAL BACKGROUND

The court had previously dismissed plaintiff's First Amended Complaint with leave to amend and warned that failure to file a Second Amended Complaint or a notice of intent to stand on the dismissed complaint could result in dismissal for failure to prosecute and failure to comply with a court order. Plaintiff's counsel timely filed a declaration requesting more time and alternatively indicating an intent to stand on the First Amended Complaint. The court granted plaintiff one final opportunity to file a Second Amended Complaint.

PROCEDURAL HISTORY

On December 8, 2025, the court granted defendants' motion to dismiss in part, dismissed the First Amended Complaint with leave to amend, and ordered plaintiff to file a Second Amended Complaint or a notice of intent to stand on the First Amended Complaint by December 18, 2025. On the deadline, plaintiff's counsel filed a declaration requesting an extension and alternatively stating that the declaration would serve as notice of intent to stand on the First Amended Complaint. The court granted one final opportunity to amend, set a January 16, 2026 deadline, and established deadlines for defendants' answer or Rule 12 motion.

DISPOSITION

other

CASES CITED

- Edwards v. Marin Park, Inc., 356 F.3d 1058, 1065 (9th Cir. 2004)

OPINION

CENTRAL DISTRICT OF CALIFORNIA CIVIL MINUTES - GENERAL Case No. CV 24-6532 FMO (SSCx) Date December 22, 2025 Title Noah Shumate v. Thomas McKenzie, et al. Present: The Honorable Fernando M. Olguin, United States District Judge Vanessa Figueroa None None Deputy Clerk Court Reporter / Recorder Tape No. Attorney Present for Plaintiff: Attorney Present for Defendants: None Present None Present Proceedings: (In Chambers) Order to Show Cause Re: Filing Second Amended Complaint On December 8, 2025, the court granted in part defendants' motion to dismiss.

(See Dkt. 67, Court's Order of December 8, 2025, at 2). The court dismissed the First Amended Complaint with leave to amend, and ordered plaintiff to file a Second Amended Complaint, or a Notice of Intent to Stand on First Amended Complaint ("Notice of Intent") no later than December 18, 2025. (See *id.*). Plaintiff was "cautioned that failure to timely file a Second Amended Complaint or Notice of Intent shall result in this action being dismissed for failure to prosecute and failure to comply with a court order." (See *id.* at 3).

On December 18, 2025, plaintiff's counsel filed a declaration requesting an extension of time to file a Second Amended Complaint. (See Dkt. 68, Declaration of Caree Harper ("Harper Decl.") at ¶¶ 1-6). In the alternative, plaintiff's counsel noted that, if the court did not grant an extension, the declaration would serve as notice that plaintiff intends to stand on his First Amended Complaint rather than file a Second Amended Complaint.

(See Dkt. 68, Harper Decl. at ¶ 6); see also *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th Cir. 2004) (explaining that to avoid dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, plaintiff must file an amended complaint or a notice that he will stand on the dismissed complaint). Even though plaintiff's Second Amended Complaint was due on December 18, 2025, the court will give plaintiff one final opportunity to file a Second Amended Complaint or otherwise respond.

Plaintiff is again admonished to carefully consider the arguments raised by defendants in their motion to dismiss. (See Dkt. 67, Court's Order of December 8, 2025, at 1-2). Based on the foregoing IT IS ORDERED THAT: 1. If plaintiff still wishes to pursue this action, he is granted until January 16, 2026, to file a Second Amended Complaint ("SAC"). No further extensions will be granted.

In the event plaintiff does not file an SAC, the court will assume that plaintiff will stand on his First Amended Complaint. (See Dkt. 68, Harper Decl. at ¶ 6); *Edwards*, 356 F.3d at 1065. CENTRAL DISTRICT OF CALIFORNIA CIVIL MINUTES - GENERAL Case No. CV 24-6532 FMO (SSCx) Date December 22, 2025 Title Noah Shumate v. Thomas McKenzie, et al. 2. Defendants shall file their Answer to the Second Amended Complaint or a motion pursuant to Fed.

R. Civ. P. 12 no later than January 30, 2026. 3. For purposes of a motion to dismiss, the parties are excused from the meet-and-confer requirement. Initials of Preparer vdr

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