

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Scott v. Heredia

Scott · No. 1:24-cv-01067-KES-CDB · Decided March 10, 2025

OPINION

Scott v. Heredia

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 DESIRAE SCOTT, et al., Case No. 1:24-cv-01067-KES-CDB 12 Plaintiffs,

ORDER TO SHOW CAUSE WHY

SANCTIONS SHOULD NOT BE IMPOSED

13 v.

FOR PLAINTIFFS' FAILURE TO

PROSECUTE THIS ACTION AND TO

14 ANTONIA HEREDIA, et al.,

COMPLY WITH THE COURT'S ORDERS

15 Defendants.

ORDER CONTINUING THE

MANDATORY SCHEDULING

16

CONFERENCE TO APRIL 16, 2025, AT

9:00 A.M. 17

ORDER DIRECTING PLAINTIFFS TO

18

EFFECT SERVICE OF THIS ORDER AND

TO FILE PROOF OF SERVICE

19

FIVE-DAY DEADLINE

20 21 Plaintiffs Desirae Scott, Johnathan Williams, and minors S.W. and D.W. through their 22
guardian ad litem Desirae Scott (collectively, "Plaintiffs"), initiated this action with the filing of
23 a complaint on September 7, 2024. (Doc. 1). Plaintiffs thereafter were granted status to proceed
24 in forma pauperis. (Doc. 12). Thereafter, Plaintiffs filed the operative, first amended complaint
25 on December 10, 2024, alleging cause of action against against Defendants Antonia Heredia,

26 Dizander Guerrero, Bisola Awaye, Maria Tinoco, Maira Puente, Ashley Bryant, Carole Allen,
27 Desire Lopez, Cynthia Bertrand, and Fatima Dee (collectively, “Defendants”). (Doc. 13). 28
The day following Plaintiffs’ filing of the first amended complaint, the Clerk of the Court 1 issued
summonses for service upon Defendants, and the Court entered an order setting a 2 mandatory
scheduling conference for March 13, 2025. (Docs. 14-16). The Court’s order 3 directed Plaintiffs
to “diligently pursue service of summons and complaint” and “promptly file 4 proofs of service.”
(Doc. 16 at 1). The order further advised Plaintiffs that failure to diligently 5 prosecute this action
“may result in the imposition of sanctions, including the dismissal of 6 unserved defendants.” Id.
To date, Plaintiffs have not filed proofs of service nor any report 7 setting forth an explanation for
the failure, and no Defendant has appeared in the action. 8 Local Rule 110 provides that “[f]ailure
of counsel or of a party to comply with these 9 Rules or with any order of the Court may be
grounds for imposition by the Court of any and all 10 sanctions...within the inherent power of the
Court.” The Court has the inherent power to control 11 its docket and may, in the exercise of that
power, impose sanctions where appropriate, including 12 dismissal of the action. *Bautista v. Los
Angeles Cnty.*, 216 F.3d 837, 841 (9th Cir. 2000). 13 In addition, Rule 4(m) of the Federal Rules
of Civil Procedure provides: “If a defendant 14 is not served within 90 days after the complaint is
filed, the court - on motion or on its own after 15 notice to the plaintiff - must dismiss the action
without prejudice against that defendant or order 16 that service be made within a specified time.”
Fed. R. Civ. P. 4(m). Absent a showing of good 17 cause, failure to comply with Rule 4(m)
requires dismissal of any unserved defendant. 18 Here, the deadline to serve defendants expires
tomorrow (March 11, 2025). Absent a 19 showing of good cause, the Court is required to dismiss
unserved defendants pursuant to Rule 20 4(m). 21 Conclusion and Order 22 Based on the
foregoing, IT IS HEREBY ORDERED that within three (3) days of entry of 23 this order,
Plaintiffs SHALL show cause in writing why sanctions should not be imposed – 24 including
dismissal of any unserved Defendant or this action in its entirety – for Plaintiffs’ 25 failure to
prosecute, failure to serve the summonses and complaint in a timely manner, and 26 failure to
promptly file proof of service. Filing summonses returned executed following entry of 27 this
order WILL NOT relieve Plaintiffs of their obligation to respond to this order in writing. 28 IT IS
FURTHER ORDERED that the scheduling conference previously set for March 13, 1 |} 2025, is
CONTINUED to April 16, 2025, at 9:00 A.M. 2 And IT IS FURTHER ORDERED that Plaintiffs
shall serve a copy of this order on 3 || Defendants within three (3) days of entry of this order and
promptly file proof of service thereof. 4 Any failure by Plaintiffs to timely respond to this order to
show cause will result in 5 || the imposition of sanctions, including a recommendation to dismiss
this action. 6 || IT IS SO ORDERED. Dated: March 10, 2025 | nnd Rr

8 UNITED STATES MAGISTRATE JUDGE

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