

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gallegos v. Thayer

Gallegos v. Thayer · No. 2:25-cv-0327 DAD CKD P · Decided May 1, 2025

SUMMARY

A magistrate judge recommends dismissing Benjamin Robert Gallegos's 42 U.S.C. § 1983 action without prejudice because he failed to file a required second amended complaint. The recommendation also advises denying as moot his request for injunctive relief and explains the procedure and deadline for filing objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Carolyn K. Delaney
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 1, 2025
DOCKET	2:25-cv-0327 DAD CKD P
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal of a prisoner civil-rights action without prejudice for failure to file a required second amended complaint, and denial as moot of a request for injunctive relief.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations

TOPICS

- civil procedure
- section 1983
- prisoners rights
- injunctions

PRACTICE AREAS

- Civil procedure
- Prisoner civil rights
- Federal jurisdiction and procedure
- Equitable relief

QUESTIONS PRESENTED

- Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) and Local Rule 110 because plaintiff failed to file a second amended complaint by the court-ordered

deadline.

2. Whether plaintiff's request for injunctive relief should be denied as moot following the recommended dismissal.

HOLDINGS

1. The magistrate judge recommended that the action be dismissed without prejudice because plaintiff failed to file the required second amended complaint by the court-ordered deadline.
2. The magistrate judge recommended denying plaintiff's request for injunctive relief as moot.

KEY QUOTATIONS

"Plaintiff has not filed a second amended complaint." (at 1)

"This action be dismissed without prejudice." (at 1)

"Plaintiff's request for injunctive relief, ECF No. 13, be denied as moot." (at 1)

FACTUAL BACKGROUND

Benjamin Robert Gallegos is a state prisoner proceeding pro se and seeking relief under 42 U.S.C. § 1983. After the court dismissed his amended complaint with leave to file a second amended complaint, he failed to file the required pleading by the April 21, 2025 deadline. He also had a pending request for injunctive relief.

PROCEDURAL HISTORY

Plaintiff, a state prisoner proceeding pro se under 42 U.S.C. § 1983, filed an amended complaint that was dismissed with leave to amend on March 20, 2025. The second amended complaint was due April 21, 2025, but plaintiff did not file it. The magistrate judge recommended dismissal without prejudice and denial as moot of plaintiff's request for injunctive relief, subject to objections and review by the assigned district judge.

DISPOSITION

other

CASES CITED

- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 BENJAMIN ROBERT GALLEGOS, No. 2:25-cv-0327 DAD CKD P 12
Plaintiff, 13 v. FINDINGS AND RECOMMENDATIONS 14 THAYER, et al., 15 Defendants. 16
17 Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 18
1983.

On March 20, 2025, plaintiff's amended complaint was dismissed with leave to file a 19 second amended complaint. The second amended complaint was due on April 21, 2025. Plaintiff 20 has not filed a second amended complaint. 21 Accordingly, IT IS HEREBY RECOMMENDED that: 22 1. This action be dismissed without prejudice. See Local Rule 110; Fed. R. Civ. P. 23 41(b).

24 2. Plaintiff's request for injunctive relief, ECF No. 13, be denied as moot. 25 These findings and recommendations are submitted to the United States District Judge 26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 27 after being served with these findings and recommendations, plaintiff may file written objections 28 with the court.

The document should be captioned "Objections to Magistrate Judge's Findings 1 | and Recommendations." Plaintiff is advised that failure to file objections within the specified 2 || time waives the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th 3 || Cir. 1991). 4 | Dated: April 30, 2025 Card ke yy a 5 CAROLYN K DELANEY? 6 UNITED STATES MAGISTRATE JUDGE 7 8 9} 1 gall0327.fta 10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28