

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

Larry Sermeno v. Jeff Macomber, et al.

Sermeno v. Macomber · No. 2:25-CV-02377-TLN-DMC · Decided November 25, 2025

OPINION

Macomber

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

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11 LARRY SERMENO, No. 2:25-CV-02377-TLN-DMC

12 Plaintiff, 13 v. ORDER 14 JEFF MACOMBER, et al., 15 Defendants. 16 17 Plaintiff Larry
Sermeno (“Plaintiff”), who is proceeding pro se, brings this civil action. 18 Pending before the
Court is Plaintiff’s original complaint (ECF No. 1), motion to appoint counsel 19 (ECF No. 3),
motion for preliminary and permanent injunction (ECF No. 4), motion for expedited 20 review
and relief (ECF No. 5), motion for expedited settlement conference (ECF No. 8), request 21 for
judicial notice (ECF No. 10), and request for criminal referral (ECF No. 11). 22 This matter was
referred to a United States Magistrate Judge pursuant to 28 23 U.S.C. § 636(b)(1)(B)
and Local Rule 302. Thereafter, the magistrate judge reviewed Plaintiff’s 24 complaint in
accordance with 28 U.S.C. §1951(e)(2) and issued findings and recommendations to 25 dismiss
the action. (ECF No. 13.) The findings and recommendations were served on Plaintiff, 26
including notice that Plaintiff may file objections within fourteen days of service. (ECF No. 13.)
27 The time to object has elapsed and Plaintiff has not filed any objections to the findings and 28
recommendations. 1 The Court presumes that the magistrate judge’s findings of fact are correct.
See *Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge’s
conclusions of law are 3 reviewed de novo. See *Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir.
2007). 4 The magistrate judge recommends dismissing this action based on the Younger
abstention 5 doctrine because Plaintiff also sought relief through a state habeas petition and appeal
of his 6 underlying criminal conviction. *Younger v. Harris*, 401 U.S. 37 (1971). As the magistrate
judge 7 correctly states: “Younger abstention is concerned with overlapping principles of equity,
comity, 8 and federalism and directs federal courts to abstain from granting injunctive or
declaratory relief 9 that would interfere with pending state or local court proceedings in certain
situations.” (ECF No. 10 13 at 3 (citing *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018);
Gilbertson v. Albright, 11 381 F.3d 965, 973 (9th Cir. 2004)).) “However, federal courts should not

dismiss actions where 12 damages are at issue; rather, damages actions should be stayed until the state proceedings are 13 completed.” Gilbertson, 381 F.3d at 968; see e.g., Rhoden v. Mayberg, 361 F. App’x 895, 896 14 (9th Cir. 2010) (vacating district court’s dismissal and remanding for entry of a stay on action for 15 damages). 16 In his complaint, Plaintiff seeks declaratory and injunctive relief as well as damages. 17 (ECF No. 1 at 14–15.) Under Ninth Circuit precedent, the Court declines to dismiss Plaintiff’s 18 claims for damages on the basis of Younger abstention. 19 Accordingly, IT IS HEREBY ORDERED as follows: 20 1. The findings and recommendations filed October 24, 2025 (ECF No. 13) are 21 declined in part: Plaintiff’s claims for damages may proceed. 22 2. The findings and recommendations filed October 24, 2025 (ECF No. 13) are 23 adopted in part: Plaintiff’s claims for declaratory and injunctive relief are 24 dismissed without prejudice on the basis of Younger abstention doctrine. 25 3. As a result, Plaintiff’s motion for preliminary and permanent injunction (ECF No. 26 4) is denied as moot. 27 4. The case and remaining motions (ECF Nos. 3, 5, 8, 10, 11) are referred back to the 28 magistrate judge for further proceedings, including any further 28 U.S.C. 1 § 1915(e)(2)(B) review, if necessary, and assessment of whether it is appropriate 2 to enter a stay of this action based on Ninth Circuit precedent. 3 IT IS SO ORDERED. 4 | Date: November 25, 2025

6 TROY L. NUNLEY

7 CHIEF UNITED STATES DISTRICT JUDGE

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