

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

Randy Ausborn v. Newsom et al.

Ausborn v. Newsom · No. 1:25-cv-01290-HBK (PC) · Decided October 17, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 RANDY AUSBORN, Case No. 1:25-cv-01290-HBK (PC) 12 Plaintiff,
ORDER TO SHOW CAUSE 13 v. NOVEMBER 14, 2025 DEADLINE 14 NEWSOM et al, 15
Defendant. 16 17 Plaintiff—a prisoner—initiated this action by filing a pro se civil rights
complaint under 18 42 U.S.C. § 1983 that was docketed on October 1, 2025.

(Doc. No. 1). In this certified 19 Complaint dated and signed “under penalty of perjury,” Plaintiff
asserts he has filed no other 20 lawsuits while a prisoner. (Doc. No. 1 at 2, 10).¹ 21 The Court
takes judicial notice² of its records which reveal that Plaintiff has filed the 22 following 10 civil
cases before he filed the instant case: (1) Randy Ausborn v. Atascadero State 23 Hospital, Case
No. 2:07-cv-00816-AHM-RC (C.D.

Cal.); (2) Randy Ausborn v. Raffled Dotch et 24 al., Case No. 2:07-cv-05035-UA-RC (C.D. Cal.);
(3) Randy Ausborn v. Atascadero State 25 Hospital et al., Case No. 2:07-cv-07564-UA-RC (C.D.
Cal.); (4) Ausborn v. CHCF California et 26 1 It appears on a cursory review Plaintiff’s complaint
is illegible. 27 2 Pursuant to Federal Rule of Evidence 201(b)(2), “[t]he court may judicially
notice a fact that is not subject to reasonable dispute because it... can be accurately and readily
determined from 28 sources whose accuracy cannot reasonably be questioned.” 1 al., Case No.
2:19-cv-00960-KJM-AC (E.D.

Cal.);³ (5) Ausborn v. CHCF et al., Case No. 2:19- 2 cv-02220-JAM-CKD (E.D. Cal.); (6)
Ausborn v. California Health Care Facility et al., Case No. 3 2:20-cv-00546-JAM-DMC (E.D.
Cal.); (7) Ausborn v. CHCF et al., Case No. 2:20-cv-00593- 4 KJM-JDP (E.D. Cal.);⁴ (8) Ausborn
v. California Health Care Facility et al., Case No. 2:20-cv- 5 00590-WBS-AC (E.D. Cal.); (9)
Ausborn v. California Health Care Facility et al., Case No. 6 2:20-cv-01341-JAM-DMC (E.D.

Cal.); and (10) Ausborn v. Kern County Sheriff Dept. et al., 7 Case No. 1:22-cv-00210-JLT-SKO
(E.D. Cal.). Therefore, it appears Plaintiff’s representation, 8 under penalty of perjury, that he has
filed no prior lawsuits while a prisoner is not correct. 9 Plaintiff is advised, although he may be
proceeding pro se, he is nevertheless governed by the 10 Federal Rules of Civil Procedure,
including Rule 11.

11 Under Rule 11, the person who signs, files, submits, or later advocates any paper to the 12 court certifies that “to the best of the person’s knowledge, information, and belief, formed after an 13 inquiry reasonable under the circumstances,” inter alia, the paper “is not being presented for any 14 improper purpose,” and “the factual contentions have evidentiary support.” Fed.

R. Civ. P. 15 11(b)(1), (3). The Court may sanction persons who violate Rule 11 and may exercise its inherent 16 authority to respond to a party’s bad faith conduct. *Simpson v. Lear Astronics Corp.*, 77 F.3d 17 1170, 1177 (9th Cir. 1996) (Rule 11 sanctions may be imposed against pro se litigant); *Walker v. 18 Guelker*, 29 F.3d 1386, 1390 (9th Cir. 1994) (same).

19 Fraud on the court is an example of bad faith conduct meriting sanctions under the court’s 20 inherent authority. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 54 (1991) (affirming sanctions 21 against plaintiff “for the fraud he perpetrated on the court”). Courts find a complaint “malicious 22 when a prisoner misrepresents his prior litigation history on a complaint form requiring disclosure 23 of such history and signs the complaint under penalty of perjury.” *Allen v. Santiago*, No. 22- 24 11946, 2023 WL 5745494, at *1 (11th Cir.

Sept. 6, 2023) (citation omitted). This is because 25 “‘perjury is among the worst kinds of misconduct’ and cuts at the very heart of the mission of the 26 3 This case was originally filed in the Eastern District Fresno Division at Case No. 1:19-cv- 27 00696-JDP and was transferred intradistrict to the Eastern District Sacramento Division. 4 This case was dismissed for Plaintiff’s failure to file an amended complaint after his initial 28 complaint failed to state a claim. nee ee I II III I IIE IES IIR ISR IEEE IIS GOS INGE GOES III EDS EE 1 federal courts.” *Kennedy v. Huibregtse*, No. 13-C-004, 2015 WL 13187300, at *2 (E.D.

Wis. 2 | Nov. 13, 2015), *aff’d*, 831 F.3d 441 (7th Cir. 2016) (quoting *Rivera v. Drake*, 767 F.3d 685, 686 3 | (7th Cir. 2014)). 4 The Court will afford Plaintiff an opportunity to show cause why the district court should 5 | not dismiss this case as a sanction for Plaintiff’s apparent bad faith conduct under Rule 11 and 6 | pursuant to its inherent authority.

7 Accordingly, it is hereby ORDERED: 8 1. No later than November 14, 2025, Plaintiff shall show cause why the district court 9 should not dismiss this case for Plaintiff providing false statements on the complaint 10 form. 11 2. If Plaintiff fails to timely respond to this show cause order, the Court will recommend 12 the district court dismiss this case as a sanction for Plaintiff’s abuse of the judicial 13 process, which will count as a strike.° 14 3.

In the alternative, by the same date, Plaintiff can file a Notice to Voluntarily Dismiss 15 Case Under Federal Rule of Civil Procedure 41 to avoid a further strike.° 16 17 Dated: _ October 17, 2025 Nebo Th. foareh Zackte 18 HELENA M. BARCH-KUCHTA UNITED STATES MAGISTRATE JUDGE 19 20 21 22 23 24 25 || > Under § 1915(g), “the three-strikes bar,” prisoners who have had on three or more prior occasions a case dismissed as frivolous, malicious,

or for failure to state a claim may be barred from proceeding in forma pauperis in future civil actions and required to prepay the filing fee in full.

Lomax v. Ortiz-Marquez, 140 S. Ct. 1721, 1723 (2020); see also Andrews v. Cervantes, 493 F.2d 1047, 1052 (9th Cir. 2007). 27 || © The Court will defer ruling on Plaintiff's motion to proceed in forma pauperis (Doc. No. 2) to avoid assessing the filing fees or determining whether Plaintiff may be barred under the three-strikes rule until 28 | after Plaintiff responds to this Order to Show Cause.