

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Fordyce v. Shirley

Fordyce · No. 1:25-cv-00106 GSA (PC) · Decided March 10, 2025

SUMMARY

The United States District Court for the Eastern District of California directs Plaintiff Joshua Fordyce to show cause why the § 1983 action should not be dismissed for failure to prosecute and failure to obey a court order. The court alternatively permits Plaintiff to file a first amended complaint within thirty days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Gary S. Austin
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 10, 2025
DOCKET	1:25-cv-00106 GSA (PC)
DISPOSITION	other
PROCEDURAL POSTURE	In a pro se prisoner civil-rights action under 42 U.S.C. § 1983, the court previously screened the complaint and found that it failed to state a claim, ordering Plaintiff to file an amended complaint. After Plaintiff failed to do so or request an extension, the court issued an order to show cause.
PRECEDENTIAL VALUE	Unknown; district-court order directing a pro se prisoner to show cause

TOPICS

- civil rights
- section 1983
- prisoners rights
- civil procedure
- motion to amend

PRACTICE AREAS

- civil rights
- prisoner civil rights
- federal civil procedure

QUESTIONS PRESENTED

1. Whether Plaintiff's failure to file an amended complaint as ordered warranted an order to show cause for failure to prosecute and failure to obey a court order.
2. Whether Plaintiff should be permitted to file a first amended complaint instead of filing a showing of cause.

HOLDINGS

1. A plaintiff's failure to comply with an order directing the filing of an amended complaint may warrant an order to show cause why the action should not be dismissed for failure to prosecute and failure to obey a court order.
2. The court allowed Plaintiff thirty days either to show cause why the action should not be dismissed or to file a first amended complaint.

KEY QUOTATIONS

"Plaintiff's failure to file an amended complaint as ordered has stalled this process, and it warrants the Court issuing an order directing Plaintiff to show cause why this matter should not be dismissed for failure to prosecute and for failure to obey a court order." (at 2)

FACTUAL BACKGROUND

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil-rights action seeking relief under 42 U.S.C. § 1983. The court's screening order found that the complaint failed to state a claim and directed Plaintiff to file an amended complaint within thirty days. Plaintiff allowed that period to expire without amending the complaint or requesting an extension, and three motions for appointment of counsel were denied.

PROCEDURAL HISTORY

Plaintiff filed a § 1983 action while proceeding in forma pauperis. On January 29, 2025, the court screened the complaint, determined that it failed to state a claim, and allowed thirty days to amend. Plaintiff did not amend or seek an extension, instead filing three unsuccessful motions for appointment of counsel. The court ordered Plaintiff to show cause within thirty days why the action should not be dismissed, while permitting Plaintiff to file a first amended complaint as an alternative.

DISPOSITION

other

CASES CITED

- Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)

OPINION

(PC) Fordyce v. Shirley

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 JOSHUA FORDYCE, A.K.A. BRITTANY No. 1:25-cv-00106 GSA (PC)

FORDYCE,

12 ORDER DIRECTING PLAINTIFF TO SHOW

Plaintiff, CAUSE WHY THIS MATTER SHOULD NOT

13 BE DISMISSED FOR FAILURE TO OBEY A

v. COURT ORDER

14 HEATHER SHIRLEY, et al., (ECF No. 10) 15 Defendants. PLAINTIFF'S SHOWING OF
CAUSE OR, IN

16 THE ALTERNATIVE, HER FIRST

AMENDED COMPLAINT DUE IN THIRTY

17 DAYS

18 19 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil 20
rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States 21
Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 22 For the reasons
stated below, Plaintiff will be ordered to show cause why this matter 23 should not be dismissed
for failure to obey a court order. As an alternative to filing the showing 24 of cause, Plaintiff may
file an amended complaint. Plaintiff will be given thirty days to take 25 either course of action.

26 I. RELEVANT FACTS

27 On January 29, 2025, Plaintiff's complaint was screened. See generally ECF No. 10. The 28
screening order found that the complaint failed to state a claim upon which relief could be 1
granted. Id. at 7. As a result, Plaintiff was given thirty days to file an amended complaint. Id. 2 The
thirty-day period Plaintiff had to file an amended complaint has passed and Plaintiff 3 has not filed
an amended complaint, nor has Plaintiff requested an extension of time to do so. 4 Instead, since
the issuance of the Court's order, Plaintiff has filed three motions for the 5 appointment of counsel.
See ECF Nos. 12, 14, 16. Each of those motions have been denied. See 6 ECF Nos. 13, 15, 17.

7 II. DISCUSSION

8 Both the Court and the public have an interest in the disposal of cases in an expedient 9 manner.
See generally *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) 10 (presuming
public has interest in expeditious litigation). Plaintiff's failure to file an amended 11 complaint as
ordered has stalled this process, and it warrants the Court issuing an order directing 12 Plaintiff to
show cause why this matter should not be dismissed for failure to prosecute and for 13 failure to
obey a court order. Plaintiff will be given thirty days to do so. As an alternative to 14 Plaintiff
filing a showing of cause, within the same thirty-day period, Plaintiff may instead file the 15 first
amended complaint as she was previously ordered to do. 16 Accordingly, IT IS HEREBY

ORDERED that: 17 1. Plaintiff is ordered to SHOW CAUSE why this matter should not be
DISMISSED for 18 failure to prosecute and for failure to obey a court order; 19 2. As an
alternative to filing a showing of cause, Plaintiff may file a first amended 20 complaint, and 21 3.
Plaintiff shall have thirty days to take either course of action. 22 Plaintiff is cautioned that failure
to comply with this order within the time allotted 23 may result in a recommendation that this
matter be dismissed. 24 IT IS SO ORDERED. 25 26 Dated: March 9, 2025 /s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE
27 28