

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

John Valdivia v. Miriam Vasquez, et al.

Valdivia v. Vasquez · No. 1:24-cv-00597-SKO · Decided November 10, 2025

OPINION

Vasquez

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 JOHN VALDIVIA, Case No.: 1:24-cv-00597-SKO 12 Plaintiff, ORDER CONSTRUING
LODGED FIRST

AMENDED COMPLAINT TO BE MOTION

13 v. TO AMEND COMPLAINT AND

PROPOSED FIRST AMENDED

14 MIRIAM VASQUEZ, et al., COMPLAINT 15 Defendants. (Doc. 20)

16 ORDER TERMINATING MOTION TO

DISMISS FILED AUGUST 15, 2025

17 (Doc. 15) 18

ORDER DIRECTING PLAINTIFF TO FILE

19 OPPOSITION OR STATEMENT OF NON-

OPPOSITION TO MOTION TO DISMISS

20 FILED NOVEMBER 5, 2025, WITHIN 30

DAYS

21 22 23 Plaintiff John Valdivia, a civil detainee, is appearing pro se and in forma pauperis in this
24 civil rights action. This action proceeds on Plaintiff's constitutional claims against Defendant
25 Vasquez.

26 I. RELEVANT BACKGROUND

27 On August 15, 2025, Defendant filed a Notice of Appearance (Doc. 11), Defendant 1 Vasquez's
Memorandum of Points and Authorities in Support of Motion to Dismiss (Doc. 13), a 2 second or
duplicate Notice of Appearance (Doc. 14), and a second filing titled Defendant Miriam 3
Vasquez's Notice of Motion and Motion to Dismiss (Doc. 15). 4 On August 20, 2025, Defendant
filed Defendant Miriam Vasquez's Notice of Errata 5 Regarding Motion to Dismiss. (Doc. 16.) 6
In response to Defendant's notice of errata, the Court entered a minute order on August 7 21,
2025. (See Docket Entry No. 17.) At Defendant's request, the Court struck docket entry 8 numbers

12 and 13 as filed in error. (Id.) The Court also directed Plaintiff “to file any opposition 9 or statement of non-opposition” to the motion to dismiss “within 21 days of the date of this 10 minute order.” (Id.) 11 On September 19, 2025, when Plaintiff failed to respond within 21 days, the Court issued 12 its Order to Show Cause (OSC) in Writing Why Sanctions Should Not Be Imposed for Plaintiff’s 13 Failure to File an Opposition or Statement of Non-Opposition. (Doc. 18.) Plaintiff was directed to 14 respond in writing explaining why sanctions should not be imposed, or, in the alternative, to file 15 an opposition or statement of non-opposition to Defendant’s motion within 14 days. (Id. at 3.) 16 On October 8, 2025, Defendant filed Defendant’s Notice of Plaintiff’s Non-Opposition to 17 Defendant’s Motion to Dismiss. (Doc. 19.) On October 20, 2025, the Court lodged Plaintiff’s 18 first amended complaint. (Doc. 20.) 19 On November 5, 2025, Defendant filed a second motion to dismiss, addressing the 20 substance of Plaintiff’s first amended complaint. (Doc. 21.) 21 As discussed below, the Court will construe Plaintiff’s lodged first amended complaint to 22 include a motion to amend and grant the motion. It will also terminate the original motion to 23 dismiss filed by Defendant, and direct Plaintiff to file either an opposition or statement of non- 24 opposition to the second motion to dismiss filed by Defendant on November 5, 2025.

25 II. DISCUSSION

26 Plaintiff’s Lodged First Amended Complaint Will Be Filed 27 As noted above, Plaintiff submitted a first amended complaint, presumably in response to 1 2025, motion to dismiss; the amended complaint was lodged, not filed, with the Court. (See Doc. 2 20.) 3 Plaintiff’s October 20, 2025, submission of an amended complaint is procedurally 4 deficient because it did not include a motion seeking leave to amend. Such a motion is required 5 because Defendant had already appeared in the action. See Fed. R. Civ. P. 15(a)(2) (“In all other 6 cases, a party may amend its pleading only with the opposing party’s written consent or the court’s 7 leave. The court should freely give leave when justice so requires”); see also Local Rule 220. The 8 Court will nonetheless construe Plaintiff’s lodged first amended complaint to include a motion for 9 leave to amend, and, to that extent, will grant the motion and direct the Clerk to file the lodged 10 complaint. 11 Defendant’s Original Motion to Dismiss Will Be Terminated as Moot 12 Defendant filed a second motion to dismiss following Plaintiff’s October 20, 2025, 13 submission, addressing the merits of Plaintiff’s lodged amended complaint. Accordingly, the 14 Court will terminate the original motion to dismiss, filed August 15, 2025, as moot.¹ The Court 15 will also construe Defendant’s second motion as an indication that Defendant is willing to 16 proceed without the Court screening the amended complaint.² 17 Plaintiff Shall File Only an Opposition or Statement of Non-Opposition to 18 Defendant’s November 5, 2025, Motion to Dismiss Within 30 Days 19 Plaintiff shall be provided 30 days from the date of service of this order within which to 20 file either an opposition or a statement of non-opposition to Defendant’s motion to dismiss filed

21 November 5, 2025. Plaintiff may not file another amended complaint in response to

Defendant's

22 pending motion. 23 Pursuant to Local Rule 230(l), Defendant will have 14 days from the date Plaintiff's 24 opposition or statement of non-opposition is filed within which to file any reply. No further briefs 25 1 See, e.g., *Williams v. Jalijali*, No. 2:22-cv-00605-JDP (PC), 2023 WL 4743019, at *1, 3 (E.D. Cal. July 26 25, 2023) (granting Plaintiff leave to amend and denying Defendant LaCroix's motion to dismiss as moot). 27 2 See *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (the legal standard for screening and for 12(b)(6) motions is the same). As a result, Defendant's challenges to the claims asserted in Plaintiff's first amended complaint would be subject to the same scrutiny those claims would undergo at screening. 1 will be entertained by the Court. Once briefing has concluded and the motion is deemed 2 submitted, the undersigned will issue findings and recommendations.

3 III. CONCLUSION AND ORDER

4 Based upon the foregoing, this Court HEREBY ORDERS: 5 1. The first amended complaint lodged with the Court on October 20, 2025, is construed 6 to be a motion for leave to amend and a proposed first amended complaint; 7 2. Plaintiff's motion for leave to amend is GRANTED; 8 3. The Clerk of the Court is DIRECTED to file the lodged first amended complaint 9 (Doc. 20) on the docket; 10 4. The Clerk of the Court is DIRECTED to terminate Defendant's motion to dismiss 11 filed August 15, 2025 (Doc. 15) as moot; 12 5. Within 30 days of the date of service of this order, Plaintiff SHALL file either an 13 opposition or a statement of non-opposition only to Defendant's motion to dismiss 14 filed November 5, 2025 (Doc. 21). Plaintiff may not file another amended complaint 15 in response to Defendant's pending motion; and 16 6. Plaintiff is ADVISED that any failure to file either an opposition or a statement of 17 non-opposition within 30 days, as ordered above, will result in the Defendant's 18 November 5, 2025, motion being deemed unopposed.

19 IT IS SO ORDERED. 20

21 Dated: November 7, 2025 /s/ Sheila K. Oberto .

UNITED STATES MAGISTRATE JUDGE

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