

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Juan Antonio Pacheco v. A. Moreno

Pacheco v. Moreno · No. 8:24-cv-01617-TJH-AJR · Decided May 15, 2025

SUMMARY

The United States District Court for the Central District of California ordered pro se Plaintiff Juan Antonio Pacheco to show cause why his § 1983 action against Orange County Sheriff Deputy A. Moreno should not be dismissed. The order requires Plaintiff to file subpoena forms by June 13, 2025 to facilitate identification and service of the defendant, warning that failure to do so may result in dismissal under Federal Rules of Civil Procedure 4(m) and 41(b).

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	A. Joel Richlin
JURISDICTION	United States District Court for the Central District of California
DECIDED	May 15, 2025
DOCKET	8:24-cv-01617-TJH-AJR
DISPOSITION	other
PROCEDURAL POSTURE	Order to show cause why a pro se § 1983 action should not be dismissed for failure to effectuate service and failure to prosecute.
PRECEDENTIAL VALUE	Nonprecedential district-court order

TOPICS

- service of process
- civil procedure
- section 1983

PRACTICE AREAS

- Civil procedure
- Civil rights litigation

QUESTIONS PRESENTED

- Whether the court should issue an order to show cause and warn of dismissal when the plaintiff has failed to effectuate service and has repeatedly failed to comply with orders requiring submission of a subpoena.

2. Whether failure to serve the defendant within the required period and failure to prosecute or obey court orders may support dismissal under Federal Rules of Civil Procedure 4(m) and 41(b).

HOLDINGS

1. Failure to serve a defendant within the period required by Rule 4(m), together with failure to prosecute or obey court orders, may warrant dismissal after notice and an opportunity to respond; rather than dismissing immediately, the court ordered Plaintiff to file the subpoena by June 13, 2025 and warned that noncompliance could lead to a recommendation of dismissal.

KEY QUOTATIONS

“If Plaintiff does not file a copy of the subpoena(s) by June 13, 2025 or respond to this Order, the Court will recommend that this action be dismissed with prejudice for failure to effectuate service under Rule 4(m) and failure to prosecute and obey court orders under Rule 41(b).” (3)

“The failure of the plaintiff eventually to respond to the court’s ultimatum . . . is properly met with the sanction of a Rule 41(b) dismissal.” (3)

“The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts.” (3)

FACTUAL BACKGROUND

Plaintiff filed an amended complaint under 42 U.S.C. § 1983 against a single defendant identified as Orange County Sheriff Deputy A. Moreno. The U.S. Marshals could not serve Moreno because he could not be located at the address Plaintiff supplied. Despite multiple court orders and extensions, Plaintiff did not file a copy of the subpoena directed to the Orange County Sheriff's Department that was necessary for the court to assist with identifying the defendant and effectuating service.

PROCEDURAL HISTORY

Plaintiff filed an amended § 1983 complaint naming Orange County Sheriff Deputy A. Moreno. The U.S. Marshals were unable to serve Moreno because he could not be located at the address provided by Plaintiff. After repeatedly directing Plaintiff to obtain and file a subpoena to help identify and locate Moreno, the court found that Plaintiff still had not filed the subpoena and ordered him to do so by June 13, 2025, warning that failure to comply could result in a recommendation of dismissal with prejudice under Rule 41(b) and dismissal for failure to serve under Rule 4(m).

DISPOSITION

other

CASES CITED

- Edwards v. Marin Park, Inc., 356 F.3d 1058, 1064-65 (9th Cir. 2004)
- Link v. Wabash R.R. Co., 370 U.S. 626, 629-31 (1962)

OPINION

Juan Antonio Pacheco v. A. Moreno

PER CURIAM.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:24-cv-01617-TJH-AJR Date: May 15, 2025 Page 1 of 3 Title: Juan Antonio Pacheco v. A. Moreno

DOCKET ENTRY: ORDER TO SHOW CAUSE WHY THIS ACTION SHOULD

NOT BE DISMISSED FOR FAILURE TO EFFECTUATE

SERVICE AND FAILURE TO PROSECUTE

PRESENT:

HONORABLE A. JOEL RICHLIN, UNITED STATES MAGISTRATE JUDGE

_ Claudia Garcia-Marquez_ _____None_____ _None__ Deputy Clerk Court Reporter/Recorder Tape No.

ATTORNEYS PRESENT FOR ATTORNEYS PRESENT FOR

PLAINTIFF: DEFENDANTS: None Present None Present

PROCEEDINGS: (IN CHAMBERS)

On September 3, 2024, pro se Plaintiff Juan Antonio Pacheco (“Plaintiff”) filed an Amended Complaint under 42 U.S.C. § 1983 (“Amended Complaint”). (Dkt. 9.) The Amended Complaint names a single defendant, Orange County Sheriff Deputy “A. Moreno” (“Defendant”). Pursuant to the Court’s order directing service of process, the U.S. Marshals were unable to serve Defendant because he could not be located at the address Plaintiff provided in his original Complaint. (Dkt. 17.) On November 26, 2024, the Court instructed Plaintiff to serve one or more subpoenas duces tecum directed to the Orange County Sheriff’s Department, Professional Standard Division at 320 N. Flower Street, Santa Ana, CA 92703, to obtain Defendant’s identifying information. (Dkt. 20.)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:24-cv-01617-TJH-AJR Date: May 15, 2025 Page 2 of 3 Title: Juan Antonio Pacheco v. A. Moreno On January 24, 2025, Plaintiff filed a Proof of Service for the subpoena(s) but failed to submit a copy of the subpoena to the Court. (Dkts. 27, 28.) On January 31, 2025, the Court again instructed Plaintiff to file a copy of the subpoena(s) so that a summons could be issued and service of process could be effectuated by the U.S. Marshals. (Dkt. 29.) On February 20, 2025, Plaintiff filed a “Notice of Complying to Court Order.” (Dkt. 32.) However, Plaintiff once again did not submit a copy of the subpoena allegedly served on the Orange County Sheriff’s Department. (Id.) On March 10, 2025, the Court granted Plaintiff another opportunity to submit a copy of the subpoena so that the Court could direct the U.S. Marshals to assist with service. (Dkt. 33.) On

March 24, 2025, Plaintiff file a request seeking an extension of time to submit a copy of the subpoena to the Court. (Dkt. 34.) On March 26, 2025, Plaintiff filed a notice stating that he had complied with the Court's orders and submitted a copy of the subpoena to the Court, but no subpoena was attached to this filing. (Dkt. 36.) On April 3, 2025, the Court granted Plaintiff an extension until April 30, 2025 to submit a copy of the subpoena to the Court. (Dkt. 35.) As of today, Plaintiff has neither filed a copy of the subpoena(s) nor requested an additional extension of time to do so. The action cannot proceed unless and until Plaintiff effectuates service of the subpoena, which does not appear to have occurred. The Court is attempting to assist by directing the U.S. Marshals to effectuate service, but needs Plaintiff to file with the Court a copy of the Subpoena. The Court Clerk is directed to provide Plaintiff with two new subpoena forms. Plaintiff must submit a copy of the subpoena forms to the Court by June 13, 2025. Until and unless Plaintiff can clearly identify a named defendant for service, this case cannot proceed. Plaintiff is expressly advised that if he does not file a copy of the subpoena(s) by June 13, 2025 or respond to this Order, the Court will recommend that this action be dismissed with prejudice for failure to effectuate

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No. 8:24-cv-01617-TJH-AJR Date: May 15, 2025 Page 3 of 3 Title: Juan Antonio Pacheco v. A. Moreno service under Rule 4(m) and failure to prosecute and obey court orders under Rule 41(b). See Fed. R. Civ. P. 4(m) (“If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”); *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1064-65 (9th Cir. 2004) (“The failure of the plaintiff eventually to respond to the court’s ultimatum . . . is properly met with the sanction of a Rule 41(b) dismissal.”); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-31 (1962) (“The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts.”). If Plaintiff no longer wishes to pursue this action, he may voluntarily dismiss the entire action, certain claims, or certain defendants by filing a Notice of Dismissal in accordance with Federal Rule of Civil Procedure 41(a)(1). A form Notice of Dismissal is attached for Plaintiff’s convenience. IT IS SO ORDERED. Attachment: AO 88B, Subpoena Forms, available at <https://www.uscourts.gov/sites/default/files/ao088b.pdf>. CV-09, Notice of Dismissal Pursuant to Federal Rules of Civil Procedure 41(a) or (c).