

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. CV 16-3577-JFW (KS) Date: December 19, 2016

Title Richard Owens v. Soto et al

Present: The Honorable: Karen L. Stevenson, United States Magistrate Judge

Roxanne Horan-Walker  
Deputy Clerk

N/A  
Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

**Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE**

On May 23, 2016, Richard Owens (“Plaintiff”), a California state prisoner who is proceeding *pro se* and *in forma pauperis* (“IFP”), filed a civil rights complaint alleging Fourth and Eighth Amendment violations based on correctional officers’ search of his cell and subsequent assault. (Dkt. No. 1.) On June 9, 2016, the Court dismissed the complaint and ordered Plaintiff to file a First Amended Complaint. (Dkt. No. 5.) On August 15, 2016, Plaintiff filed an Amended Complaint. (Dkt. No. 9.) On September 6, 2016, the Court dismissed the Amended Complaint with leave to amend and ordered Plaintiff to file a Second Amended Complaint within 30 days. (Dkt. No. 16.)

On October 7, 2016, Plaintiff filed a Second Amended Complaint (“SAC”). (Dkt. No. 22.) On October 20, 2016, the Court dismissed the SAC with leave to amend and ordered Plaintiff to file a Third Amended Complaint within 30 days, *i.e.* no later than November 19, 2016. (Dkt. No. 25.) On November 23, 2016, four days after the Third Amended Complaint was due, Plaintiff filed an “Opposition in Motion to Dismiss” attacking the Court’s decision to dismiss the SAC with leave to amend. (Dkt. No. 27.) On November 30, 2016, the Court issued a minute order reminding Plaintiff that the proper means of alleging additional facts and/or claims that will cure the defects in the SAC that the Court identified in its October 20, 2016 Order, is through filing a Third Amended Complaint (or a Notice of Voluntary Dismissal in which he dismisses the official capacity claims against all Defendants and all claims against Defendants Franklin and Christinsen) that complies with this Court’s orders. (Dkt. No. 28.)

Plaintiff’s deadline for filing a Third Amended Complaint and/or Notice of Voluntary Dismissal was November 19, 2016. More than four weeks have now passed since Plaintiff’s

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deadline, and Plaintiff has neither filed the Third Amended Complaint/Notice of Voluntary Dismissal nor otherwise communicated with the Court about his case.

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, an action may be subject to involuntary dismissal if a plaintiff “fails to prosecute or to comply with these rules or a court order.” Accordingly, the Court could properly recommend dismissal of the action for Plaintiff’s failure to prosecute and timely comply with the Court’s orders.

**However, in the interests of justice, Plaintiff is again ORDERED TO SHOW CAUSE on or before January 9, 2017, why the Court should not recommend that this action be dismissed for failure to prosecute. Plaintiff may discharge this Order by filing: (1) a request for an extension of time to file a Third Amended Complaint along with a declaration signed under penalty of perjury that explains why he failed to comply with the Court’s November 30, 2016 Order; or (2) a Third Amended Complaint that complies with the Court’s October 20, 2016 and November 30, 2016 Orders. Alternatively, Plaintiff may dismiss the entire matter without prejudice by filing a signed document entitled “Notice Of Voluntary Dismissal” pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure.**

**Plaintiff’s failure to timely respond to this order will result in a recommendation of dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.**

Initials of Preparer

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