

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. EDCV 15-692-VAP (KLS) Date: September 8, 2015

Title *Jamel Antoine West v. S. Ibarra 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: ORDER TO SHOW CAUSE FOR FAILURE TO PROSECUTE

On April 9, 2015, plaintiff, a state pretrial detainee proceeding *pro se* and *in forma pauperis*, filed a civil rights Complaint against defendants, five West Valley Detention Center guards, for excessive force. (ECF Docket No. 1.) On April 24, 2015, the Court dismissed the Complaint except to the extent it asserted an individual capacity excessive force claim against defendant M. Morgan. (ECF Docket No. 6.)

On June 15, 2015, plaintiff filed a First Amended Complaint (“FAC”), which the Court dismissed on August 10, 2015 except to the extent it asserted individual capacity excessive force claims against the five defendants. (ECF Docket Nos. 10, 11.) In its August 10, 2015 Order, the Court directed plaintiff to file by August 24, 2015 a Second Amended Complaint or, if plaintiff did not wish to pursue any of the dismissed claims, either a Notice Of Intent Not To File Second Amended Complaint or a Notice Of Dismissal. (ECF Docket No. 11.) The Court expressly cautioned plaintiff that his “failure to timely respond to this Order – *i.e.*, to file either (i) a Second Amended Complaint; or (ii) a Notice Of Intent Not To File Second Amended Complaint or Notice Of Dismissal – may result in a recommendation to dismiss this action with or without prejudice based upon plaintiff’s failure diligently to prosecute and/or plaintiff’s failure to comply with the Court’s order.” (*Id.*)

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Plaintiff, however, took no action in response to the Court’s August 10, 2015 Order. The deadline for plaintiff to file a Second Amended Complaint, Notice Of Intent Not To File Second Amended Complaint, or Notice Of Dismissal is now 15 days past.

A *pro se* litigant “is subject to the same rules of procedure and evidence” as other parties “who are represented by counsel.” *United States v. Merrill*, 746 F.2d 458, 465 (9th Cir. 1984). 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 timely comply with the Court’s Order of August 10, 2015.

However, in the interests of justice, plaintiff is **ORDERED TO SHOW CAUSE on or before October 8, 2015**, why the Court should not recommend that this action be dismissed with prejudice for failure to prosecute. Plaintiff may discharge this Order by filing: (1) a declaration signed under penalty of perjury, explaining why he has failed to comply with the Court’s August 10, 2015 order; *and* (2) if plaintiff wishes to pursue any of the dismissed claims, a Second Amended Complaint, or, if plaintiff does not wish to pursue any of the dismissed claims, a Notice Of Intent Not To File Second Amended Complaint or a Notice Of Dismissal.

Plaintiff is advised that the failure to respond to this order will lead the Court to conclude that Plaintiff does not intend to continue this action, and the action will be recommended for dismissal on that basis and under Federal Rule of Civil Procedure 41(b) for failure to prosecute the action.

IT IS SO ORDERED.

Initials of Preparer

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RH
