

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 12-1450-JLS (JEM) Date August 29, 2014

Title Gregory P Carothers v. C.O. P Jiron, et al.

Present: The Honorable John E. McDermott, United States Magistrate Judge

S. Anthony

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE RE FAILURE TO PROSECUTE AND FAILURE TO COMPLY WITH COURT ORDER

On September 10, 2012, Gregory P. Carothers (“Plaintiff”) filed a civil rights complaint pursuant to 28 U.S.C. § 1983 (“Complaint”). On October 16, 2012, the Court dismissed the Complaint with leave to amend. On November 15, 2012, Plaintiff filed a First Amended Complaint. The Court dismissed the First Amended Complaint on February 13, 2013. On May 20, 2013, Plaintiff filed a Second Amended Complaint (“SAC”).

On October 9, 2013, Defendants Pedro Jiron, Ann Matulin, Eric Corona, Jose Cruz, and Mary Castillo (collectively, “Defendants”) filed an Answer to the SAC. (Docket No. 40.)

On October 18, 2013, the Court issued an Order Re: Further Proceedings in Civil Rights Action And Setting of Cut-Off Dates requiring “each party to file and serve a status report on January 20, 2014.” (Docket No. 50 at 2.)

On October 28, 2013, the Court’s Order of October 18, 2013, was returned to the Court as undeliverable. (Docket No. 52.)

Plaintiff filed a Notice of Change of Address on November 8, 14, and 21, 2013, and January 14, 2014, respectively. (Docket Nos. 53-55, 57.)

Defendants filed their status report on January 16, 2014. (Docket No. 56.)

On January 28, 2014, the Court sua sponte extended the deadline for Plaintiff to file his status report to no later than February 11, 2014. (Docket No. 58.)

On March 27, 2014, the Court issued an order (1) directing the clerk to serve Plaintiff with the Court’s Order of October 18, 2013, at Plaintiff’s current address of record, (2) sua sponte extending the deadline for Plaintiff to file his status report as required by the Court’s Order of October 18, 2013, to no later than April 10, 2014, and (3) ordering Defendants to serve Plaintiff with Defendants’ Status Report

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filed on January 16, 2014, at Plaintiff's current address of record no later than April 10, 2014. (Docket No. 59.)

On April 10, 2014, Defendants filed a Declaration of Jeanette M. Palma Re: Service of Status Report, stating that Defendants' Status Report of January 16, 2014, was served on Plaintiff on March 27, 2014.

On May 5, 2014, after Plaintiff failed to file his status report by the extended deadline set forth in the March 27, 2014, Order, the Court issued an Order to Show Cause ("OSC") directing Plaintiff to show cause, no later than May 19, 2014, why this action should not be dismissed for failure to prosecute and/or failure to comply with a Court order. (OSC at 2.) The OSC explicitly cautioned Plaintiff that "failure to respond to this Order to Show Cause as directed will result in the Court recommending that the case be dismissed for failure to prosecute and/or failure to comply with a Court order." (OSC at 2.)

Plaintiff did not file the status report or other response to the May 5, 2014, OSC by the deadline set forth in the OSC. In light of Plaintiff's failure to file a status report or otherwise respond to the Court's orders, including the May 5, 2014, OSC, the procedural history of this case, and the factors weighing in favor of dismissal, the Court issued a Report and Recommendation recommending dismissal of this action for failure to prosecute on June 6, 2014.

On June 9, 2014, the Clerk entered into the docket in this case a notice of change of address by Plaintiff, which was received by the Court on June 3, 2014 ("Notice"). In the Notice, Plaintiff notifies the Court of his change of address, and "request[s] a postponement in the proceedings [to a date no sooner than November[] 15th[,] 2014], as [he is] currently in custody on a minor probation violation."

On July 24, 2014, the Court issued an order (1) directing the clerk to serve Plaintiff with the Court's Order of October 18, 2013, at his current address of record; (2) denying Plaintiff's request to stay these proceedings because a stay is not warranted in these circumstances; (3) extending the deadline for Plaintiff to file his status report as required by the Court's Order of October 18, 2013, to no later than August 25, 2014; and (4) withdrawing the June 6, 2014, Report and Recommendation. The Court's Order of July 24, 2014, specifically admonished Plaintiff that

failure to comply with this Order may result in the Court recommending that the case be dismissed for failure to prosecute and/or comply with a court order. Moreover, Plaintiff has an obligation to keep the court apprised of a current address throughout the duration of his lawsuit. Local Rule 41-6. Plaintiff is advised that his failure to comply with his continuing obligation to keep the court apprised of a current mailing address and/or his failure to comply with a court order because he did not receive the order, could result in his case being dismissed for failure to obey the orders of this court and/or for want of prosecution. See Local Rule 41-6.

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As of this date, Plaintiff has not filed his status report. The Court's Order of July 24, 2014, was returned to the Court on August 15, 2014, with a note stating, "Return to Sender" and "Unable To Forward No Longer [At] This Facility". Plaintiff has not filed a change of address notifying the Court of a new address. As the Court previously advised Plaintiff, Local Rule 41-6 requires Plaintiff, inter alia, to keep the Court apprised of his current address.

Accordingly, IT IS HEREBY ORDERED THAT Plaintiff SHOW CAUSE why this action should not be dismissed for failure to prosecute and/or failure to comply with a court order. Plaintiff shall respond to this Order to Show Cause in writing on or before **September 12, 2014**.

In responding, Plaintiff must either (1) file both (A) a status report as directed by the Court's Orders of October 18, 2013, and July 24, 2014, and (B) a Notice of Change of Address advising the Court of Plaintiff's current address, or (2) explain why he has failed to do so.

Plaintiff is advised that failure to respond to this Order to Show Cause as directed will result in the Court recommending that the case be dismissed for failure to prosecute and/or failure to comply with a court order. See Link v. Wabash R.R. Co., 370 U.S. 626, 629-30 (1962); Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

cc: Parties

Initials of Preparer

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