

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL CANADAY, et al.,
Plaintiffs,
v.
COMCAST CORPORATION, et al.,
Defendants.

Case No. [15-cv-04648-JSW](#)
Docket Nos.: 83, 84

JASON WILLIAMS, et al.,
Plaintiffs,
v.
COMCAST CORPORATION, et al.,
Defendants.

Case No. [15-cv-04732-JSW](#)
Docket Nos.: 65, 66

JEFFREY COLEMAN, et al.,
Plaintiffs,
v.
COMCAST CORPORATION, et al.,
Defendants.

Case No. [15-cv-04782-JSW](#)
Docket Nos.: 63, 64

CALEB DUBOIS, et al.,
Plaintiffs,
v.
COMCAST CORPORATION, et al.,
Defendants.

Case No. [15-cv-04809-JSW](#)
Docket Nos.: 63, 64

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GREGORY PETERS, et al.,
Plaintiffs,
v.
COMCAST CORPORATION, et al.,
Defendants.

Case No. [15-cv-04869-JSW](#)

Docket Nos.: 91, 92

CORY BARRETT HALL,
Plaintiff,
v.
COMCAST OF CONTRA COSTA, INC., et
al.,
Defendants.

Case No. [16-cv-04175-JSW](#)

Docket Nos.: 60, 61

JOSEPH JOSHUA DAVIS, et al.,
Plaintiffs,
v.
COMCAST CORPORATION, et al.,
Defendants.

Case No. [16-cv-04177-JSW](#)

Docket Nos.: 58, 59

LAWRENCE ELKINS, et al.,
Plaintiffs,
v.
COMCAST CORPORATION, et al.,
Defendants.

Case No. [16-cv-04180-JSW](#)

Docket Nos.: 61, 62

HERNAN PAEZ, et al.,
Plaintiffs,
v.
COMCAST CORPORATION, et al.,
Defendants.

Case No. [16-cv-04181-JSW](#)

Docket Nos.: 56, 57

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KRIS COOK, et al.,
Plaintiffs,
v.
COMCAST CORPORATION, et al.,
Defendants.

Case No. [16-cv-04182-JSW](#)

Docket Nos.: 62, 63

KEVIN HUFFMAN, et al.,
Plaintiffs,
v.
COMCAST CORPORATION, et al.,
Defendants.

Case No. [16-cv-04183-JSW](#)

ORDER TO SHOW CAUSE WHY NON-RESPONSIVE INDIVIDUAL PLAINTIFFS SHOULD NOT BE DISMISSED; REQUIRING SERVICE; REQUIRING PROPOSED ORDERS; AND VACATING HEARINGS

Docket Nos.: 61, 62

On January 31, 2017, counsel for Plaintiffs moved to withdraw as from the representation of certain individual Plaintiffs in these eleven related cases.¹ The docket numbers of these motions are listed in the caption of this order. The motions were originally noticed for March 3, 2017.

In the motions and supporting declarations, counsel stated that communications with the individual Plaintiffs in question have broken down, and that these specific individual Plaintiffs have not responded to counsel’s ongoing and repeated attempts to contact them over the course of several months.

The Court entered a docket note following the filing of these motions to notify counsel that counsel must renote the motions for a day at least 35 days after the date of filing and file a proof of service on the individual Plaintiffs in question. The following day, counsel for Plaintiffs renoted the motions for March 24, 2017 and filed proofs of service showing service on these individual Plaintiffs “either by facsimile or in sealed envelopes.” Mailing addresses were listed on the proofs of service, but facsimile numbers were not. The proofs of service indicated that service of the motions was made, but not service of the revised notices of hearing. The docket numbers of

¹ No motions to withdraw as counsel have been filed in the other seven cases that are related to these cases.

1 the revised hearing notices and proofs of service are also listed in the caption of this order.

2 Responses to the motions to withdraw were due by February 15, 2017. No responses have
3 been filed.

4 The Court has reviewed the record in this case and is aware that this motion to withdraw
5 follows discovery proceedings before Magistrate Judge Vadas. In those discovery proceedings,
6 the parties filed a joint letter brief on December 1, 2016 stating that “Plaintiffs’ counsel intends to
7 dismiss or withdraw from representation” with regard to a list of non-responding individual
8 Plaintiffs in the related cases. Thereafter, in December 2016, Magistrate Judge Vadas filed an
9 order in each case in December 2016 reciting that Plaintiffs’ counsel represented at a hearing that
10 the non-responding Plaintiffs would be dismissed. Certain individual Plaintiffs have subsequently
11 been dismissed pursuant to stipulation. Others, however, remain in these cases. It is these
12 remaining non-responding Plaintiffs who are the subject of the pending motions to withdraw.

13 The motions to withdraw are due to the non-responsiveness of the individual Plaintiffs, and
14 follow Defendants’ contention that Plaintiffs have failed to comply with discovery obligations.
15 The question arises, therefore, whether their counsel should be allowed to withdraw, leaving non-
16 responsive Plaintiffs in this litigation without counsel, or whether their cases should be dismissed
17 for failure to prosecute. This court weighs five factors in determining whether to dismiss a case
18 for failure to prosecute: “(1) the public’s interest in expeditious resolution of litigation; (2) the
19 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
20 favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.”
21 *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (quotation omitted).

22 **The Court therefore ORDERS Plaintiffs to SHOW CAUSE, no later than March 15,**
23 **2017, why the following individual Plaintiffs should not be dismissed with prejudice from**
24 **these cases for failure to prosecute:**

25 *Canaday v. Comcast Corp.*, 15-cv-04648-JSW

- 26
- Ryan Murray. The Court notes that the trial of Mr. Murray’s case remains
27 scheduled for March 6, 2017. If Mr. Murray does not comply with the pretrial
28 schedule in his case and appear for trial, he is HEREBY WARNED that his case

1 also will be dismissed for failure to prosecute for that additional reason.

2 *Williams v. Comcast Corp.*, 15-cv-04732-JSW

- 3 • Brian Antis
- 4 • Kevin Cook
- 5 • Hector Martinez
- 6 • Peter Neang
- 7 • Samour Soeung

8 *Coleman v. Comcast Corp.*, 15-cv-04782-JSW

- 9 • Jeff Keith Chung
- 10 • Terrence Ruffen
- 11 • Christopher Thatcher

12 *DuBois v. Comcast Corp.*, 15-cv-04809-JSW

- 13 • Lawrence Wing

14 *Peters v. Comcast Corp.*, 15-cv-04869-JSW

- 15 • Benjamin Cabanayan
- 16 • Steven Kremesec, Jr.
- 17 • Christian Olague
- 18 • Sean Pate
- 19 • Scott Rader
- 20 • Chieu Vo

21 *Hall v. Comcast Corp.*, 16-cv-04175-JSW

- 22 • Cory Barrett Hall

23 *Davis v. Comcast Corp.*, 16-cv-04177-JSW

- 24 • Rafael Barajas, Jr.
- 25 • Joseph Joshua Davis
- 26 • Penny Schoonover

27 *Elkins v. Comcast Corp.*, 16-cv-04180-JSW

- 28 • Lawrence Elkins

1 *Paez v. Comcast Corp.*, 16-cv-04181-JSW

- 2 • Darrin Brooks and/or the Estate of
- 3 • Nicholas DePriest
- 4 • David Johnson, Jr.
- 5 • Daniel Woodard

6 *Cook v. Comcast Corp.*, 16-cv-04182-JSW

- 7 • Fernando Inigo
- 8 • Dorsey Ford
- 9 • Steven Souza

10 *Huffman v. Comcast Corp.*, 16-cv-04183-JSW

- 11 • Mark Haumschilt
- 12 • Kevin Huffman
- 13 • Heng Ith
- 14 • Robert Lowry
- 15 • Jeremy Powell

16 These individual Plaintiffs may: (1) respond to this order to show cause through their
17 current counsel; (2) respond without an attorney; or (3) hire a new attorney and respond through
18 that new attorney, after the attorney files an appropriate notice of appearance in compliance with
19 Northern District of California Civil Local Rules 5-1(c)(2) and 11-5. Regardless of how Plaintiffs
20 respond, their responses must be received by the Court no later than March 15, 2017.

21 The Court hereby WARNS the individual Plaintiffs listed above that the failure to respond
22 by March 15, 2017, either individually or through counsel, is very likely to result in the
23 DISMISSAL WITH PREJUDICE of each of their cases, as to them individually, for failure to
24 prosecute.

25 The Court further ORDERS counsel for Plaintiffs to serve a copy of this order via U.S.
26 Mail on each of the individual Plaintiffs listed above (i.e., all the Plaintiffs who are the subject of
27 the motions to withdraw). Plaintiffs' counsel shall file proof of such service no later than
28 February 22, 2017.

