UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

FORREST KENDRID, Plaintiff, v. YAHIYA, et al., Defendants.	No. 2:23-cv-1145 TLN CSK P ORDER

Plaintiff is a former civil detainee, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. For the following reasons, the findings and recommendations issued September 17, 2024 recommending dismissal of this action for failure to prosecute are vacated, and plaintiff is ordered to file a status report within thirty days.

As discussed in the September 17, 2024 findings and recommendations, plaintiff was released from the California Medical Facility ("CMF") on or around June 19, 2024. (ECF No. 39 at 1-2.) On July 5, 2024, defendants filed a motion to extend the discovery deadline to September 13, 2024 and the dispositive motion deadline to December 21, 2024. (Id. at 1.) In relevant part, defendants stated that on June 25, 2024, after defense counsel determined a new address where plaintiff could receive documents, defense counsel served plaintiff with an Amended Notice of Taking Deposition. (Id. at 2.) On July 1, 2024, plaintiff called defense counsel to inform them that he could not attend the deposition due to the unpredictability of his housing situation. (Id.)

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Plaintiff reported that he was unable to stay at his original housing due to needing a "higher level of care," and that he was currently at Martin Luther King Junior Community Hospital, awaiting direction on permanent housing, possibly at a skilled nursing facility. (Id.)

On July 17, 2024, this Court granted plaintiff thirty days to show cause why this action should not be dismissed for his failure to prosecute. (Id.) This Court observed that court records reflected that plaintiff did not inform the Court of his new address following his release from prison on or around June 10, 2024. (Id.) On July 29, 2024, the July 17, 2024 order to show cause served on plaintiff was returned by the United States Postal Service. (Id.) Accordingly, on September 17, 2024, this Court recommended that this action be dismissed for failure to prosecute. (Id. at 4.)

On September 24, 2024, plaintiff left a voice message with court staff. In the voice message, plaintiff states that he is hospitalized and that he is unable to write due to his disability. Plaintiff states that following his hospitalization, he will be housed at a board and care home. Plaintiff requests that the Court serve his orders on his aunt, whose address plaintiff provides. Plaintiff states that his aunt will bring plaintiff's mail to the hospital and that plaintiff will do his best to respond.

This Court is sympathetic to plaintiff's hospitalization. It is unclear whether plaintiff is able to prosecute this action. Accordingly, the September 17, 2024 findings and recommendations are vacated. Within thirty days of date of this order, plaintiff shall file a status report addressing whether he is still hospitalized or has been moved to a board and care home. In the status report, plaintiff shall address whether defendants may depose plaintiff at this time. Plaintiff shall also inform the Court of his current address. If plaintiff does not file this status report within thirty days, this Court will again recommend dismissal of this action for failure to prosecute.

In plaintiff's other action proceeding before this Court, case no. 2:22-cv-2301 TLN CSK P, the Court received a letter from Yolanda Smith, filed September 24, 2024.[1] In this letter Ms.

[1] This Court takes judicial notice of Ms. Smith's letter filed in case no. 2:22-cv-2301. Fed. R. Evid. 201.

Smith states that she delivers plaintiff's mail to plaintiff while he is in the hospital at the Los Angeles General Medical Center. Ms. Smith also states that plaintiff's mailing address is 3131 W. 69th Street, Los Angeles, California. This Court observes that on September 12, 2024, defendants served plaintiff with their third motion to extend all deadlines, filed in the instant action, at the address provided by Ms. Smith. (ECF No. 37-2.) In his voicemail, plaintiff stated that his mailing address is 3171 W. 61 Street, Los Angeles, California 90043.

This Court presumes that Ms. Smith is plaintiff's aunt and that plaintiff may receive mail at the address provided in Ms. Smith's letter. On this one occasion, this Court will direct the Clerk of the Court to serve the instant order on plaintiff at the address provided by Ms. Smith. Plaintiff is informed that Ms. Smith is not authorized to file pleadings on plaintiff's behalf.

Plaintiff shall not further communicate with the Court via telephone/voice mail.

Accordingly, IT IS HEREBY ORDERED that:

1. The September 17, 2024 findings and recommendations (ECF No. 39) are vacated;

2. Within thirty days of the date of this order, plaintiff shall file the status report discussed above;

3. The Clerk of the Court is directed to serve the instant order on plaintiff at the following address: 3131 W. 69th Street, Los Angeles, California 90043; and

4. Failure to comply with this order will result in a recommendation of dismissal of this action.

Dated: 9/26/2024

CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

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