

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Steven Magana v. County of Kern, et al.

No. 1:23-cv-00561 GSA (PC) · No. 1:23-cv-00561 GSA (PC) · Decided February 26, 2025

OPINION

(PC) Magana v. County of Kern

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 STEVEN MAGANA, No. 1:23-cv-00561 GSA (PC)

12 Plaintiff, ORDER AND FINDINGS AND

RECOMMENDATION

13 v.

ORDER RECOMMENDING DISMISSAL

14 COUNTY OF KERN, et al., WITHOUT PREJUDICE FOR FAILURE TO
PROSECUTE

15 Defendants. (ECF No. 6) 16 17 Plaintiff, a county jail inmate proceeding pro se and in forma
pauperis, has filed this civil 18 rights action seeking relief under 42 U.S.C. § 1983. The matter
was referred to a United States 19 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and
Local Rule 302. 20 For the reasons stated below, the undersigned will recommend that this matter
be 21 dismissed for failure to prosecute. Moreover, given that no current address exists for
Plaintiff, 22 and that no Defendant has been served, a period to file objections to this order will
not be given. 23

I. RELEVANT FACTS

24 On April 10, 2023, Plaintiff's complaint and application to proceed in forma pauperis 25 were
docketed. ECF Nos. 1, 2. Shortly thereafter, Plaintiff's application to proceed in forma 26 pauperis
was granted. ECF No. 4. 27 In January 2025, Plaintiff's complaint was screened. ECF No. 6. In
the screening order, 28 1 the Court found that his complaint failed to state a claim upon which
relief could be granted. Id. 2 at 6. As a result, Plaintiff was ordered to file an amended complaint.
Id. He was given thirty 3 days to do so. Id. 4 On January 17, 2025, the Court's order directing
Plaintiff to amend the complaint was 5 returned to it marked "Undeliverable, Unable to Forward."
To date, Plaintiff has not filed a 6 change of address with the Court, nor has he requested an
extension of time to do so. Plaintiff has 7 not filed an amended complaint, either.

8 II. APPLICABLE LAW

9 A. Federal Rule of Civil Procedure 41(b) and Local Rules 110, 182(f) and 183(b) 10 Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails 11 to prosecute or he fails to comply with a court order. See Fed. R. Civ. P. 41(b). Local Rule 110 12 also permits the imposition of sanctions when a party fails to comply with a court order. L.R. 13 110. 14 Local Rule 182(f) permits service to be effective service at a prior address if a party fails 15 to notify the Court and other parties of his address change. Id. Finally, Local Rule 183(b) gives a 16 party who appears in propria persona a period of time to file a notice of change of address if some 17 of his mail is returned to the Court. Id. 18 B. Malone Factors 19 The Ninth Circuit has clearly identified the factors to consider when dismissing a case for 20 failure to comply with a court order. It writes: 21 A district court must weigh five factors in determining whether to dismiss a case 22 for failure to comply with a court order: “(1) the public’s interest in expeditious 23 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on 24 their merits; and (5) the availability of less drastic sanctions.” 25 26 Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (quoting Thompson v. 27 Hous. Auth. of City of Los Angeles, 782 F.2d 829 (9th Cir. 1986) (per curiam)).

28 III. DISCUSSION

1 A. Rule 41(b) and Local Rules 110, 182(f) and 183(f) Support Dismissal of This 2 Case 3 Although the docket indicates that Plaintiff’s copy of the order directing him to file a 4 notice of current address with the Court was returned, Plaintiff was properly served. It is a 5 plaintiff’s responsibility to keep a court apprised of his current address at all times. Pursuant to 6 Local Rule 182(f), service of documents at the record address of the party is fully effective. 7 Furthermore, the fact that Plaintiff failed to file a notice of change of address with the Court 8 warrants the dismissal of this matter, in accord with Rule 41(b) and Local Rules 110 and 183(b). 9 B. Application of Malone Factors Supports the Dismissal of This Case 10 1. Expeditious Resolution of Litigation; Court’s Need to Manage Its Docket 11 Plaintiff has been given sufficient time to file a notice of change of address as well as file 12 an amended complaint. Yet, he has failed to do either, nor has he contacted the Court to provide 13 an exceptional reason for not having done so. 14 The Eastern District Court has an unusually large caseload.¹ “[T]he goal of fairly 15 dispensing justice . . . is compromised when the Court is forced to devote its limited resources to 16 the processing of frivolous and repetitious requests.” Whitaker v. Superior Court of San 17 Francisco, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted). Thus, it follows that 18 keeping this case on the Court’s docket when Plaintiff has not attempted to file a notice of current 19 address with the Court, or file an amended complaint, is not a good use of the Court’s already 20 taxed resources. Indeed, keeping this matter on the Court’s docket would stall a quicker 21 disposition of this case. Additionally, in fairness to the many other litigants who currently have 22 cases before the Court, no additional time should be spent on this matter. 23 2. Risk of Prejudice

to Defendants 24 1 The Eastern District of California carries one of the largest and most heavily weighted 25 caseloads in the nation. See Office of the Clerk, United States District Court, Eastern District of California, 2024 Annual Report, “Weighted Filings,” p. 35 (2024) (“[O]ur weighted caseload far 26 exceeds the national average . . . ranking us fourth in the nation and first in the Ninth Circuit.”). 27 This problem is compounded by a shortage of jurists to review its pending matters. See generally *id.* (stating 2024 Biennial Judgeship Survey recommended request for four additional permanent 28 judgeships for Eastern District of California). 1 Furthermore, because viable Defendants have yet to be identified and served in this case, 2 no one has put time and effort into defending against it. As a result, there will be no prejudice to 3 anyone other than Plaintiff if the matter is dismissed. On the contrary, dismissal will benefit any 4 potentially viable Defendants because they will not have to defend themselves against Plaintiff’s 5 complaint. 6 3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on 7 Merits 8 Finally, given that Plaintiff has had sufficient time under the Local Rules to file a change 9 of address² since its order directing Plaintiff to file a notice of current address with the Court 10 issued, without Plaintiff’s notice, there is no less drastic option than dismissal. Although the 11 disposition of cases on their merits is preferred, this matter cannot be prosecuted without a current 12 address for Plaintiff and without participation by Plaintiff, nor can it be disposed of on its merits.

13 IV. CONCLUSION

14 For these reasons, consistent with Federal Rule of Civil Procedure 41(b) and Local Rules 15 110, 182(f) and 183(b), and having considered the Malone factors, the undersigned recommends 16 that this matter be dismissed without prejudice for failure to prosecute. Because Plaintiff cannot 17 be located and because no viable Defendants have been identified and served, no period of time to 18 file objections will be given. 19 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a 20 District Judge to this matter. 21 IT IS FURTHER RECOMMENDED that this matter be DISMISSED without prejudice 22 for failure to prosecute. See Fed. R. Civ. P. 41(b); Local Rule 183(b). 23 IT IS SO ORDERED. 24 25 Dated: February 26, 2025 /s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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2 In 2025, the period that a litigant appearing in propria person has to file a notice of change of 28 address was reduced from sixty-three days to thirty days. See Local Rule 183(b)