

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

Noe C. Villarreal v. Superior Court Merced Co., et al.

No. 1:24-cv-01143 KES GSA (PC) · No. No. 1:24-cv-01143 KES GSA (PC) · Decided June 25, 2025

OPINION

(PC) Villarreal v. Superior Court Merced Co

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 NOE C. VILLARREAL, No. 1:24-cv-01143 KES GSA (PC)

12 Plaintiff, FINDINGS AND RECOMMENDATIONS

13 v. ORDER RECOMMENDING DISMISSAL OF

MATTER FOR FAILURE TO OBEY COURT

14 SUPERIOR COURT MERCED CO, et al., ORDERS AND FOR FAILURE TO

PROSECUTE

15 Defendants. ECF Nos. 13, 14 16

PLAINTIFF'S OBJECTIONS DUE IN

17 FOURTEEN DAYS

18 19 Plaintiff is a litigant who was previously housed at Atascadero State Hospital and who is 20
proceeding pro se in this action. He seeks relief pursuant to 42 U.S.C. § 1983 and other federal 21
statutes. This proceeding was referred to undersigned by Local Rule 302 pursuant to 28 U.S.C. §
22 636(b)(1)(B). 23 For the reasons stated below, the undersigned will recommend that this matter
be 24 dismissed without prejudice for failure to obey court orders and for failure to prosecute.
Plaintiff 25 will be given fourteen days to file objections to this order.

26 I. RELEVANT FACTS

27 A. Screening of Complaint 28 On September 26, 2024, Plaintiff's complaint was docketed.
ECF No. 1. On November 1 7, 2024, the Court screened Plaintiff's complaint and determined that
it violated Federal Rules of 2 Civil Procedure 8(a)(2) and (d)(1) and that it also failed to state a
claim upon which relief could 3 be granted pursuant to 28 U.S.C. § 1915A(a)-(b)(1). ECF No. at 9
(screening order). As a result, 4 Plaintiff was directed to file an amended complaint. Id. Plaintiff
was given thirty days to do so. 5 Id. 6 B. Screening of First Amended Complaint 7 On January 8,
2025, Plaintiff's first amended complaint ("FAC") was docketed. ECF No. 8 11. Thereafter, on
March 5, 2025, Plaintiff lodged an unsolicited second amended complaint 9 ("SAC") with the

Court. ECF No. 12. On March 11, 2025, the Court disregarded the SAC as 10 improperly filed, and it screened Plaintiff's FAC. ECF No. 13. After doing so, once again the 11 Court found that the FAC violated Rule 8 and that it failed to state any claim upon which relief 12 could be granted. ECF No. 13 at 7 (FAC screening order). 13 Based on these findings, Plaintiff was given a second opportunity to file an amended 14 complaint. ECF No. 13 at 7. Again, he was given thirty days to do so. Id. 15 C. Issuance of Order to Show Cause 16 Plaintiff failed to timely file a SAC. As a result, on April 25, 2025, the Court issued an 17 order directing Plaintiff to show cause why this matter should not be dismissed for failure to obey 18 a court order. ECF No. 14 (order to show cause). An alternative to filing the showing of cause, 19 the Court gave Plaintiff the options of either filing the SAC, or voluntarily dismissing this case.

20 Id. at 2-3. Once again, Plaintiff was given thirty days to take either course of action. Id. at 2.

21 D. Return of Order to Show Cause to Court 22 On May 6, 2025, the Court's order that had directed Plaintiff to show cause was returned 23 to it marked "Undeliverable, Not at Facility, Unable to Forward." See 5/6/25 docket entry. Since 24 then, there has been no activity on the docket by Plaintiff. He has not filed a SAC as he was 25 previously directed to do, nor has he filed a request for an extension of time to do so. Plaintiff 26 has not responded to either of the Court's orders in any way. Nor has he timely filed a notice of 27 change of address with the Court.. 28

1 II. APPLICABLE LAW

2 A. Federal Rule of Civil Procedure 41(b) and Local Rules 110, 182(f) and 183(b) 3 Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails 4 to prosecute or he fails to comply with a court order. See Fed. R. Civ. P. 41(b). Local Rule 110 5 also permits the imposition of sanctions when a party fails to comply with a court order. L.R. 6 110. 7 Local Rule 182(f) permits service to be effective service at a prior address if a party fails 8 to notify the Court and other parties of his address change. Id. Finally, Local Rule 183(b) gives a 9 party who appears in propria persona a period of time to file a notice of change of address if some 10 of his mail is returned to the Court. Id. 11 B. Malone Factors 12 The Ninth Circuit has clearly identified the factors to consider when dismissing a case for 13 failure to comply with a court order. It writes: 14 A district court must weigh five factors in determining whether to dismiss a case 15 for failure to comply with a court order: "(1) the public's interest in expeditious 16 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 17 their merits; and (5) the availability of less drastic sanctions." 18 19 *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (quoting *Thompson v. 20 Hous. Auth. of City of Los Angeles*, 782 F.2d 829 (9th Cir. 1986) (per curiam)).

21 III. DISCUSSION

22 A. Rule 41(b) and Local Rules 110, 182(f) and 183(b) Support Dismissal of This 23 Case 24 Although the docket indicates that Plaintiff's copy of the order directing him show cause 25 was returned to the Court, Plaintiff was properly served. It is a plaintiff's responsibility to keep a 26

court apprised of his current address at all times. Pursuant to Local Rule 182(f), service of 27 documents at the record address of the party is fully effective. The fact that Plaintiff failed to file 28 a notice of change of address with the Court by itself warrants the dismissal of this matter, in 1 accord with Rule 41(b) and Local Rules 110 and 183(b). 2 B. Application of Malone Factors Supports the Dismissal of This Case 3 1. Expeditious Resolution of Litigation; Court's Need to Manage Its Docket 4 Plaintiff has been given sufficient time to file a notice of change of address as well as to 5 comply with the Court's screening order and / or its order to show cause. Despite this fact, he has 6 failed to do either, nor has he contacted the Court to provide exceptional reasons for not having 7 done so. 8 The Eastern District Court has an unusually large caseload.¹ "[T]he goal of fairly 9 dispensing justice . . . is compromised when the Court is forced to devote its limited resources to 10 the processing of frivolous and repetitious requests." *Whitaker v. Superior Court of San 11 Francisco*, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted). Thus, it follows that 12 keeping this case on the Court's docket when Plaintiff has not attempted to file a notice of current 13 address with the Court, or to respond to its screening order and its order to show cause is not a 14 good use of the Court's already taxed resources. 15 2. Risk of Prejudice to Defendants 16 Furthermore, because viable Defendants have yet to be identified and served in this case, 17 no one has put time and effort into defending against it. As a result, there will be no prejudice to 18 anyone other than Plaintiff if the matter is dismissed. On the contrary, dismissal will benefit any 19 potentially viable Defendants because they will not have to defend themselves against Plaintiff's 20 complaint. 21 3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on 22 Merits 23 Finally, given that Plaintiff has had sufficient time under the Local Rules to file a change 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 of address² since its order directing Plaintiff to file a notice of current address with the Court 2 issued, without the filing of a notice of new address by Plaintiff, there is no less drastic option 3 than dismissal. Although the disposition of cases on their merits is preferred, this matter cannot 4 be prosecuted without a current address for Plaintiff and without participation by Plaintiff, nor 5 can it be disposed of on its merits.

6 IV. CONCLUSION

7 For these reasons, consistent with Federal Rule of Civil Procedure 41(b) and Local Rules 8 110, 182(f) and 183(b), and having considered the Malone factors, the undersigned recommends 9 that this matter be dismissed without prejudice for failure to prosecute. Despite the fact that 10 Plaintiff has not kept the Court apprised of his current address, and that no viable Defendants 11

have been identified and served, a period of fourteen days will nonetheless be given for Plaintiff 12 to file objections to this order. However, should this order be returned to the Court marked 13 undeliverable before the end of the fourteen-day period, the District Judge assigned to this action 14 may dismiss it immediately. 15 Accordingly, IT IS HEREBY RECOMMENDED that this matter be DISMISSED without 16 prejudice for failure to obey a court order and for failure to prosecute. See Fed. R. Civ. P. 41(b); 17 Local Rules 110, 183(b). 18 These findings and recommendations are submitted to the United States District Judge 19 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 20 after being served with these findings and recommendations, Plaintiff may file written objections 21 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings 22 and Recommendations,” and it shall not exceed fifteen pages. 23 The Court will not consider exhibits attached to the objections. To the extent that Plaintiff 24 wishes to refer to any exhibit, when possible, Plaintiff must reference the exhibit in the record by 25 its CM/ECF document and page number or reference the exhibit with specificity. Any pages filed 26 in excess of the fifteen-page limit may be disregarded by the District Judge when conducting the 27

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). 1 28 U.S.C. § 636(b)(1)(C) review of the findings and recommendations. Plaintiff’s failure to file 2 objections within the specified time may result in the waiver of certain rights on appeal. See 3 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014); *Martinez v. Ylst*, 951 F.2d 1153 (9th 4 Cir. 1991).

5 6 IT IS SO ORDERED. 7

8 Dated: June 24, 2025 /s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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