

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

McDowell v. Flores

McDowell · No. 1:21-cv-01710-CDB (PC) · Decided March 15, 2023

SUMMARY

The document contains Findings and Recommendations by a United States Magistrate Judge recommending dismissal without prejudice of Jonathan Dewitt McDowell’s civil rights action. The recommendation is based on the plaintiff’s failure to obey a screening order, file an amended complaint or notice of voluntary dismissal, or otherwise prosecute the action. The document provides a 14-day period for objections and directs the Clerk to assign a district judge.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 15, 2023
DOCKET	1:21-cv-01710-CDB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal without prejudice of a pro se prisoner civil-rights action for failure to obey a court order and failure to prosecute.
STANDARD OF REVIEW	In deciding whether to dismiss for failure to prosecute or failure to obey a court order, the court weighs the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to defendants, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations; not a final decision of the district court.
PARTIES	Jonathan Dewitt McDowell v. R. Flores, et al.

TOPICS

- sanctions
- civil procedure
- prisoners rights
- police misconduct

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice because Plaintiff failed to obey the court's screening order.
2. Whether Plaintiff's failure to respond to the screening order constituted failure to prosecute warranting dismissal under the court's inherent docket-management authority.

HOLDINGS

1. The magistrate judge recommended dismissal without prejudice because Plaintiff failed to comply with the screening order, failed to amend or voluntarily dismiss, and failed to notify the court that he wished to proceed on the cognizable claims.

KEY QUOTATIONS

“In determining whether to dismiss an action, the Court must consider several factors: (1) the public’s interest in expeditious 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 their merits; and (5) the availability of less drastic sanctions.” (at 2)

“Thus, the fourth factor—the public policy favoring disposition of cases on their merits—weighs in favor of dismissal.” (at 4)

FACTUAL BACKGROUND

Plaintiff, a former state prisoner proceeding pro se and in forma pauperis, filed a civil-rights action against prison-related defendants. The court's screening order identified potentially cognizable excessive-force and failure-to-intervene claims but required Plaintiff to choose among proceeding on those claims, amending the complaint, or voluntarily dismissing the action. Plaintiff failed to take any of those actions within the required 21-day period.

PROCEDURAL HISTORY

The court's February 13, 2023 screening order found cognizable claims for excessive force against Defendant Flores and failure to intervene against Defendant Moreno, while finding the remaining claims deficient. Plaintiff was ordered to elect whether to proceed on the cognizable claims, file a first amended complaint, or voluntarily dismiss the action within 21 days. Plaintiff did not respond, and the magistrate judge recommended dismissal without prejudice under 28 U.S.C. § 636(b)(1), subject to a 14-day objection period.

DISPOSITION

other

CASES CITED

- Thompson v. Housing Auth., City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-62 (9th Cir. 1992)
- Malone v. U.S. Postal Service, 833 F.2d 128, 130-31 (9th Cir. 1987)
- Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)
- Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988)
- Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976)
- Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

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