

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Daniel Govind v. Warden James S. Hill, et al.

Govind · No. 5:23-cv-01080-JFW-JC · Decided January 5, 2026

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF
CALIFORNIA 10 11 DANIEL GOVIND, Case No. 5:23-cv-01080-JFW-JC 12 Plaintiff, 13
MEMORANDUM OPINION AND v. ORDER DISMISSING ACTION 14 WARDEN JAMES S.
HILL, et al. 15 16 Defendants. 17 18 I. BACKGROUND AND SUMMARY 19 On June 7, 2023,
Plaintiff Daniel Govind, who is proceeding pro se, filed a 20 Civil Rights Complaint (“Original
Complaint” or “OC”) against the following 21 Defendants who are or were California Department
of Corrections and 22 Rehabilitation (“CDCR”) employees working at the California Institution
for Men 23 in Chino, California (“CIM”): (1) Warden James S. Hill; (2) Correctional Sergeant 24
Murray; (3) Correctional Officer (“CO”) Zuniga; (4) Supervising Cook Gusman; 25 and (5)
Michell Mejia, RN.

(Docket (“Dkt.”) No. 1). All Defendants were sued in 26 both their individual and official
capacities. (OC at 7-9 (as paginated on the Court’s 27 electronic docket)). 28 1 On November 8,
2023, this Court dismissed the case without prejudice based 2 on Plaintiff’s failure to pay the
filing fee and the case was closed. (Dkt. No. 9). 3 However, on January 26, 2024, the Court
reopened the case at Plaintiff’s request 4 and directed him to pay the filing fee by February 29,
2024.

(Dkt. No. 12). 5 Plaintiff timely paid the filing fee. (Dkt. No. 13). 6 On June 6, 2024, the
Magistrate Judge screened the Original Complaint 7 pursuant to 28 U.S.C. § 1915A (“First
Screening Order”). (Dkt. No. 17).¹ More 8 specifically, the First Screening Order advised Plaintiff
that the Original Complaint 9 was deficient for reasons described therein,² dismissed the Original
Complaint with 10 11 1 Absent consent by all parties, including unserved defendants, a magistrate
judge cannot 12 issue dispositive orders, including an order dismissing a claim.

Branch v. Umphenour, 936 F.3d 994, 1004 (9th Cir. 2019); see also Williams v. King, 875 F.3d
500, 504 (9th Cir. 2017) 13 (“[C]onsent of all parties (including unserved defendants) is a
prerequisite to a magistrate judge’s jurisdiction to enter dispositive decisions under § 636(c)(1).”);
28 U.S.C. § 14 636(b)(1)(A)-(B).

However, “the dismissal of a complaint with leave to amend is a 15 non-dispositive matter.”
McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991). Accordingly, a magistrate judge may
dismiss a complaint with leave to amend without the approval of a district 16 judge. See id. at

797. Additionally, a plaintiff who disagrees with a magistrate judge's order, including a nondispositive order dismissing a pleading with leave to amend, may file an 17 objection with the district judge.

See *Bastidas v. Chappell*, 791 F.3d 1155, 1162 (9th Cir. 2015); 18 see also *Hunt v. Pliler*, 384 F.3d 1118, 1124 (9th Cir. 2004) ("District court review of even these nondispositive matters... can be compelled upon objection of the party against whom the 19 magistrate has ruled.") (quoting *McKeever*, 932 F.2d at 798).

The First Screening Order 20 expressly notified Plaintiff that (1) the First Screening Order constituted non-dispositive rulings on pretrial matters; (2) to the extent a party disagreed with such non-dispositive rulings, such 21 party may seek review from the District Judge within fourteen (14) days; (3) to the extent a party believed that the rulings were dispositive, rather than non-dispositive, such party had the right to 22 object to the determination that the rulings were non-dispositive within fourteen (14) days; and 23 (4) a party would be foreclosed from challenging the rulings in the First Screening Order if such party did not seek review thereof or object thereto.

(First Screening Order at 12 n.6). Plaintiff 24 did not seek review of, or file any objection to the First Screening Order. 25 Specifically, the Magistrate Judge advised Plaintiff, albeit in greater detail and with 26 citation to authorities, that the Original Complaint, among other things, failed to state a viable claim against any Defendant, was barred by the Eleventh Amendment to the extent it sued 27 Defendants in their official capacities, and failed to state a viable Eighth Amendment failure to 28 (continued...)

2 1 leave to amend, and directed Plaintiff, within twenty days, to file one of the 2 following: (1) a First Amended Complaint which cured the pleading defects 3 described in the First Screening Order; (2) a Notice of Dismissal; or (3) a Notice of 4 Intent to Stand on the Original Complaint. (First Screening Order at 12-13). 5 On July 29, 2024, Plaintiff filed a First Amended Complaint, suing the same 6 five Defendants in their individual and official capacities.

(Dkt. No. 20). On 7 April 7, 2025, the Magistrate Judge screened the First Amended Complaint 8 ("Second Screening Order"). (Dkt. No. 23).³ More specifically, the Second 9 Screening Order advised Plaintiff that the First Amended Complaint was deficient 10 for reasons described therein,⁴ dismissed the First Amended Complaint with leave 11 to amend, and directed Plaintiff, within twenty days, to file one of the following: 12 (1) a Second Amended Complaint which cured the pleading defects described in the 13 Second Screening Order; (2) a Notice of Dismissal; or (3) a Notice of Intent to 14 Stand on the First Amended Complaint.

(Second Screening Order at 14-15). The 15 16 2(...continued) 17 protect or denial of medical care claim against any Defendant. (First Screening Order at 6-12). 18 ³See supra note 1. The Second Screening Order expressly notified Plaintiff that (1) the 19 Second Screening Order constituted

non-dispositive rulings on pretrial matters; (2) to the extent a party disagreed with such non-dispositive rulings, such party may seek review from the District 20 Judge within fourteen (14) days; (3) to the extent a party believed that the rulings were 21 dispositive, rather than non-dispositive, such party had the right to object to the determination that the rulings were non-dispositive within fourteen (14) days; and (4) a party would be 22 foreclosed from challenging the rulings in the Second Screening Order if such party did not seek review thereof or object thereto.

(Second Screening Order at 14 n.7). Plaintiff did not seek 23 review of, or file any objection to the Second Screening Order. 24 4Specifically, the Magistrate Judge advised Plaintiff, albeit in greater detail and with 25 citation to authorities, that the First Amended Complaint, among other things, failed to state a viable claim against any Defendant, was barred by the Eleventh Amendment to the extent it sued 26 Defendants in their official capacities, and failed to state a viable Fourteenth Amendment due 27 process or equal protection claim, a viable Eighth Amendment failure to protect or denial of medical care claim, or a First Amendment retaliation claim against any Defendant.

(First 28 Screening Order at 8-14). 3 1 Court granted Plaintiff multiple extensions of the deadline to comply with the 2 Second Screening Order. (See Dkt. Nos. 26, 28, 30). 3 On August 27, 2025, Plaintiff filed a Second Amended Complaint, suing 4 Warden Hill, Sergeant Murray, CO Zuniga, and Nurse Mejia in their individual 5 capacities. (Dkt. No. 31).

On October 20, 2025, the Magistrate Judge screened the 6 Second Amended Complaint (“Third Screening Order”). (Dkt. No. 32).5 More 7 specifically, the Third Screening Order advised Plaintiff that the Second Amended 8 Complaint was deficient for reasons described therein,6 dismissed the Second 9 Amended Complaint with leave to amend, and directed Plaintiff, within twenty days 10 (i.e., by November 10, 2025), to do one of the following: (1) file a Third Amended 11 Complaint which cures the pleading defects set forth in the Third Screening Order; 12 (2) sign and file a Notice of Dismissal which Plaintiff was advised would result in 13 the voluntary dismissal of this action without prejudice; or (3) file a Notice of Intent 14 to Stand on the Second Amended Complaint, indicating Plaintiff’s intent to stand on 15 the Second Amended Complaint despite the pleading defects set forth in the Third 16 Screening Order, which Plaintiff was advised may result in the dismissal of this 17 action based upon such defects.

(Third Screening Order at 11-12). 18 On November 10, 2025, Plaintiff instead filed a “Motion for Leave to File 19 20 5See supra note 1. The Third Screening Order expressly notified Plaintiff that (1) the Third Screening Order constituted non-dispositive rulings on pretrial matters; (2) to the extent a 21 party disagreed with such non-dispositive rulings, such party may seek review from the District 22 Judge within fourteen (14) days; (3) to the extent a party believed that the rulings were dispositive, rather than non-dispositive, such party had the right to object to the determination 23 that the rulings were non-dispositive within fourteen (14) days; and (4) a party

would be foreclosed from challenging the rulings in the Third Screening Order if such party did not seek 24 review thereof or object thereto.

(Third Screening Order at 11 n.4). Plaintiff did not seek review 25 of, or file any objection to the Third Screening Order. 26 Specifically, the Magistrate Judge advised Plaintiff, albeit in greater detail and with citation to authorities, that the Second Amended Complaint, among other things, failed to state a 27 viable Eighth Amendment failure to protect or denial of medical care claim against any 28 Defendant or a supervisory liability claim against Defendant Hill.

(Third Screening Order at 5- 10). 4 1 Third [A]mended Complaint in [A]beyance to Stay Pending Release [f]rom Prison 2 by a Professional Attorney” (“Motion to Stay”). (Dkt. No. 33). On November 25, 3 2025, this Court denied the Motion to Stay, but extended Plaintiff’s deadline to 4 comply with the Third Screening Order to December 15, 2025 (twenty (20) days 5 after the date of such Order) (“November Order”).⁷ (Dkt.

No. 34). The November 6 Order directed Plaintiff to do one of the following by December 15, 2025: (1) file a 7 Third Amended Complaint which cured the pleading defects set forth in the Third 8 Screening Order; (2) sign and file a Notice of Dismissal which would result in the 9 voluntary dismissal of this action without prejudice; or (3) file a Notice of Intent to 10 Stand on the Second Amended Complaint, indicating Plaintiff’s intent to stand on 11 the Second Amended Complaint despite the pleading defects set forth in the Third 12 Screening Order, which might result in the dismissal of this action based upon such 13 defects.

(November Order at 3-4). The November Order further cautioned Plaintiff 14 – in bold-faced print – that his failure timely to file a Third Amended Complaint, a 15 Notice of Dismissal, or a Notice of Intent to Stand on the Second Amended 16 Complaint may be deemed Plaintiff’s admission that amendment is futile, and may 17 result in the dismissal of this action with or without prejudice on the grounds set 18 forth in the Third Screening Order, on the ground that amendment is futile, for 19 failure diligently to prosecute and/or for failure to comply with the November 20 Order.

(November Order at 4). 21 To date – more than two weeks after the deadline to do so – Plaintiff has not 22 complied with the Third Screening Order and the November Order. More 23 specifically, he has failed to file a Third Amended Complaint, a Notice of 24 Dismissal or a Notice of Intent to Stand on the Second Amended Complaint. Nor 25 has Plaintiff communicated with the Court since filing the Motion to Stay.

26 As discussed below, this action is dismissed due to Plaintiff’s unreasonable 27 28 7In the November Order, this Court further stated that it agreed with and adopted the First, Second, and Third Screening Orders. (November Order at 2 n.1). 5 1 failure to prosecute and his failure to comply with the Third Screening Order and 2 November Order. 3 II. PERTINENT LAW 4 It is

well-established that a district court may sua sponte dismiss an action 5 where the plaintiff has failed to comply with a court order and/or unreasonably 6 failed to prosecute.

See *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-33 7 (1962); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir.) (as amended), cert. 8 denied, 506 U.S. 915 (1992); see also *McKeever v. Block*, 932 F.2d 795, 797 (9th 9 Cir. 1991) (district court may sua sponte dismiss action “only for an unreasonable 10 failure to prosecute”) (citations omitted); see also *Edwards v. Marin Park, Inc.*, 356 11 F.3d 1058, 1065 (9th Cir.

2004) (sua sponte dismissal pursuant to Fed. R. Civ. P. 12 41(b) proper sanction in cases where a plaintiff is notified of deficiencies in 13 complaint and is given “the opportunity to amend [the complaint] or be dismissed” 14 but the plaintiff “[does] nothing”) (citations omitted; emphasis in original). 15 In determining whether to dismiss an action for failure to prosecute or failure 16 to comply with court orders, a district court must consider several factors, namely 17 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need 18 to manage its docket; (3) the risk of prejudice to defendants; (4) the public policy 19 favoring disposition of cases on their merits; and (5) the availability of less drastic 20 alternatives.

See *In re Eisen*, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to 21 prosecute); *Ferdik*, 963 F.2d at 1260-61 (failure to comply with court orders). 22 Dismissal is appropriate under the foregoing analysis “where at least four factors 23 support dismissal... or where at least three factors ‘strongly’ support dismissal.” 24 *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir.

1998) (citations 25 omitted). 26 Where a plaintiff is proceeding pro se, however, the court must first notify 27 the plaintiff of the deficiencies in the complaint so that the plaintiff has an 28 opportunity “to amend effectively.” *Ferdik*, 963 F.2d at 1261 (citation omitted).

In 6 1 addition, where a Magistrate Judge originally dismissed the complaint with leave to 2 amend, the District Judge must review that decision before dismissing the entire 3 action. See *McKeever*, 932 F.2d at 797 (“While the magistrate can dismiss 4 complaints with leave to amend, the district court necessarily must review that 5 decision before dismissing the entire action.”).

A District Judge may not dismiss an 6 action for failure to comply with a court order or for unreasonable failure to 7 prosecute if the initial decision to dismiss a complaint was erroneous. *Yourish v. 8 California Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (citing *id.*). 9 III. DISCUSSION AND ORDER 10 First, this Court has reviewed the First Screening Order dismissing the 11 Original Complaint, the Second Screening Order dismissing the First Amended 12 Complaint, and the Third Screening Order dismissing the Second Amended 13 Complaint and finds that such orders adequately and properly notified Plaintiff of 14 the deficiencies in the Original Complaint, the First Amended Complaint, and the 15 Second Amended Complaint and afforded Plaintiff an opportunity to amend 16 effectively.

As reflected in the November Order, this Court agrees with and adopts 17 the First, Second, and Third Screening Orders and finds that the Magistrate Judge 18 properly dismissed the Original Complaint, the First Amended Complaint and the 19 Second Amended Complaint with leave to amend for the reasons discussed in the 20 First, Second, and Third Screening Orders.

21 Second, dismissal is appropriate based upon Plaintiff's failure to comply with 22 the Third Screening Order and November Order and the failure to prosecute. The 23 Court has considered the five factors discussed above – the public's interest in 24 expeditious resolution of litigation, the Court's need to manage its docket, the risk 25 of prejudice to the Defendants, the public policy favoring disposition of cases on 26 their merits, and the availability of less drastic alternatives.

The first two factors – 27 the public's interest in expeditiously resolving this litigation and the Court's interest 28 in managing the docket – strongly weigh in favor of dismissal. As noted above, 7 1 || Plaintiff has been notified of the deficiencies in the Second Amended Complaint 2 || and has been given ample opportunity to amend it, to dismiss it, or to notify the 3 || Court that he wishes to stand thereon.

He has done none of those things. See 4 | Edwards, 356 F.3d at 1065. The third factor, risk of prejudice to the Defendants, 5 || also weighs strongly in favor of dismissal. See *Anderson v. Air West, Inc.*, 542 6 || F.2d 522, 524 (9th Cir. 1976) (prejudice to defendants presumed from unreasonable 7 || delay) (citation omitted).

The fourth factor, the public policy favoring disposition 8 || of cases on their merits, is greatly outweighed by the factors in favor of dismissal 9 || discussed herein. As for the fifth factor, since Plaintiff has already been cautioned 10 of the consequences of his failure to prosecute and his failure to comply with the 11 Third Screening Order and November Order by the deadline to do so, and has been 12 || afforded ample opportunity to avoid such consequences but has not timely 13 | responded, no sanction lesser than dismissal is feasible.

See. e.g., *Yourish*, 191 14 || F.3d at 989 (dismissal of action with prejudice not excessive sanction for plaintiffs' 15 }| failure timely to comply with court's order to submit an amended complaint). 16 IT IS THEREFORE ORDERED that this action is dismissed based upon 17 || Plaintiff's unreasonable failure to prosecute and his failure to comply with the Third 18 | Screening Order and November Order.

19 IT IS SO ORDERED. 20 | DATED: January 5, 2026 21 23 HONORABLE JOHN F. WALTER
54 UNITED STATES DISTRICT JUDGE 25 26 27 28