

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Fortino Espinosa v. U.S. Social Security Department

Case No. CV 23-0008 GW (MRW), Document 15 · No. 2:23-cv-00008-GW-MRW · Decided March 9, 2023

SUMMARY

The United States District Court for the Central District of California dismissed a pro se plaintiff’s duplicative action alleging misconduct by the Social Security Administration and seeking punitive damages. The court dismissed the action with prejudice under Federal Rule of Civil Procedure 41(b) after the plaintiff failed to respond to an order to show cause.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	George H. Wu
JURISDICTION	United States District Court for the Central District of California
DECIDED	March 9, 2023
DOCKET	2:23-cv-00008-GW-MRW
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court sua sponte dismissed a pro se plaintiff's duplicative action after he failed to respond to an order to show cause why the action should not be dismissed.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Fortino Espinosa v. U.S. Social Security Department

TOPICS

- motions to dismiss
- civil procedure
- administrative law
- ada / disability

PRACTICE AREAS

- civil procedure
- administrative law
- Social Security disability benefits

QUESTIONS PRESENTED

- Whether the district court could dismiss the action sua sponte under Federal Rule of Civil Procedure 41(b) for failure to comply with the order to show cause.

2. Whether dismissal with prejudice was appropriate in light of the duplicative nature of the action, the apparent failure to state a claim, and the plaintiff's failure to prosecute.

HOLDINGS

1. A district court may sua sponte dismiss a civil action under Rule 41(b) when the plaintiff fails to prosecute or comply with a court order, including an order requiring a response and warning of possible dismissal.
2. Dismissal with prejudice was appropriate because the plaintiff abandoned the action by failing to respond to the order to show cause, the action was duplicative and facially deficient, and no lesser sanction would effectively advance the case.

KEY QUOTATIONS

“Dismissal of a civil action under Rule 41 may be appropriate to advance the public’s interest in the expeditious resolution of litigation, the court’s need to manage its docket, and to avoid the risk of prejudice to defendants.” (3)

“The Court concludes that dismissal is appropriate under Rule 41(b).” (4)

“Dismissal under Rule 41(b) ordinarily “operates as an adjudication on the merits” of a claim.” (4)

FACTUAL BACKGROUND

Espinosa filed a second action on the same day as another Social Security-related case, alleging what appeared to be a tort claim against the United States and seeking \$5 million in punitive damages for alleged misconduct by the Social Security Administration. The magistrate judge screened the complaint and ordered Espinosa to explain why the action stated a legitimate cause of action or to dismiss it voluntarily. Espinosa did not respond by the deadline.

PROCEDURAL HISTORY

Espinosa filed two actions concerning his failure to obtain Social Security disability benefits. In this action, the magistrate judge screened the complaint, found that it did not identify a statute or facts plausibly supporting the requested tort recovery and might implicate sovereign immunity, and ordered Espinosa to show cause why the case should not be dismissed or to voluntarily dismiss it. Espinosa filed no response, and the district court dismissed the action with prejudice under Federal Rule of Civil Procedure 41(b).

DISPOSITION

dismissed

CASES CITED

- Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962)
- Harris v. Magnum, 863 F.3d 1133, 1142 (9th Cir. 2017)
- Applied Underwriters, Inc. v. Lichtenegger, 913 F.3d 884, 892 (9th Cir. 2019)

- Omstead v. Dell, Inc., 594 F.3d 1081, 1084 (9th Cir. 2010)
- Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988)

OPINION

Fortino Martinez Espinosa v. US Social Security Department

PER CURIAM.

Case 2:23-cv-00008-GW-MRW Document 15 Filed 03/09/23 Page 1 of 4 Page ID #:63 1 2 JS-6 3
4 5 6 7 8

9 IN THE UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 12 Case No. CV 23-0008 GW (MRW)

13 FORTINO ESPINOSA,

ORDER DISMISSING ACTION

14 Plaintiff, 15 v.

16 U.S. SOCIAL SECURITY

DEPARTMENT,

17 Defendant. 18

19 20 The Court dismisses this action due to the failure of a pro se litigant 21 to respond to a court
order. 22 * * * 23 1. Plaintiff Espinosa filed two civil actions in this federal district 24 court
regarding his failure to obtain Social Security disability benefits. The 25 first case, docketed under
case number CV 23-6 GW (MRW) (C.D. Cal.), 26 appears to be a standard pro se appeal from the
agency’s adverse decision. 27 The Court (Magistrate Judge Wilner) previously issued an order 28
Case 2:23-cv-00008-GW-MRW Document 15 Filed 03/09/23 Page 2 of 4 Page ID #:64 1
instructing the parties regarding the procedures to follow in the disability 2 benefits appeal action.
That action remains open in this Court.1 3 2. The present action is a second case (filed the same
day), 4 docketed under case number CV 23-8 GW (MRW) (C.D. Cal.), that 5 confusingly appears
to allege a tort claim against the United States. 6 Plaintiff contends that he is entitled to \$5,000,000
in punitive damages due 7 to alleged misconduct by the Social Security Administration. (CV 23-8
at 8 Docket # 1, page 5.) 9 3. Judge Wilner also screened that action. (Docket # 11.) 10 Judge
Wilner noted that the action facially did not identify a statute or 11 facts that plausibly could lead
to such a recovery. Further, the magistrate 12 judge observed that the government would likely be
entitled to 13 consideration of sovereign immunity based on the allegations in the action. 14 4.
Judge Wilner therefore ordered Plaintiff to show cause why 15 this second action (CV 23-8)
should not be summarily dismissed for failure 16 to state a claim. Plaintiff was given a deadline in
mid-February by which 17 to either explain why the tort case stated a legitimate cause of action or
to 18 dismiss the matter voluntarily. 19 5. Plaintiff failed to file any response to the OSC. 20 * * *
21 6. Rule 41(b) provides that if a plaintiff “fails to prosecute or to 22 comply with these rules or a
court order, a defendant may move to dismiss 23 the action or any claim against it.” Dismissal also

may be ordered by the 24 Court sua sponte. *Link v. Wabash R.R.*, 370 U.S. 626, 629-30 (1962). 25
7. Rule 41(b) specifically authorizes a court to dismiss a civil 26 action when a plaintiff has not
filed a required pleading “after being given 27 1 The government moved to dismiss the “appeal”
for a variety of 28 reasons. Plaintiff’s deadline to respond to that motion has not expired yet. 2
Case 2:23-cv-00008-GW-MRW Document 15 Filed 03/09/23 Page 3 of 4 Page ID #:65 1 leave to
do so and has not notified the court of his intention not to file” that 2 document. *Harris v.*
Magnum, 863 F.3d 1133, 1142 (9th Cir. 2017).

3 Rule 41(b) applies when a court “mandate[s] the filing” of a pleading and
4 “indicate[s] that failure to do so would result in dismissal” under the rule. 5 Applied
Underwriters, Inc. v. Lichtenegger, 913 F.3d 884, 892 (9th Cir. 6 2019). 7 8. Dismissal of a civil
action under Rule 41 may be appropriate to 8 advance the public’s interest in the expeditious
resolution of litigation, the 9 court’s need to manage its docket, and to avoid the risk of prejudice
to 10 defendants. *Omstead v. Dell, Inc.*, 594 F. 3d 1081, 1084 (9th Cir. 2010). 11 Additionally, a
court should consider the public policy favoring disposition 12 of cases on their merits and the
availability of less drastic alternatives in 13 its evaluation. *Carey v. King*, 856 F.2d 1439, 1440
(9th Cir. 1988). 14 9. In the present action, the Court concludes that dismissal of the 15 action is
appropriate. Plaintiff filed a duplicative lawsuit that facially 16 failed to state a cause of action.
When the magistrate judge screened the 17 complaint and ordered Plaintiff to show cause why the
case should not be 18 dismissed, Plaintiff failed to respond. Plaintiff’s inability to follow the 19
magistrate judge’s order demonstrates that he has no interest in advancing 20 the action here. 21
10. By contrast, the Court, the defense, and the public have a 22 strong interest in terminating this
action. This is particularly true given 23 that Plaintiff effectively chose to abandon his case by
failing to respond to a 24 court order. Furthermore, because Plaintiff is a pro se litigant who did
not 25 comply with the magistrate judge’s previous order, no sanction short of 26 dismissal will be
effective in moving this case forward. *Carey*, 856 F.2d 27 28 3 se 2:23-cv-00008-GW-MRW
Document 15 Filed 03/09/23 Page 4of4 Page ID #:66 1 | at 1440. The Court concludes that
dismissal is appropriate under 2 | Rule 41(b). Applied *Underwriters*, 913 F.3d at 892. 3 11.
Dismissal under Rule 41(b) ordinarily “operates as an 4 | adjudication on the merits” of a claim.
Therefore, the present action is 5 | DISMISSED with prejudice. 6 IT IS SO ORDERED. 9 | Dated:
March 9, 2023

10 HON. GEORGE H. WU

UNITED STATES DISTRICT JUDGE

11 12 Presented by: 13 i — 15

HON. MICHAEL R. WILNER

16 | UNITED STATES MAGISTRATE JUDGE

17 18 19 20 21 22 23 24 25 26 27 28

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