

**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

OPINION

Fortino Martinez Espinosa v. US Social Security Department

PER CURIAM.

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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
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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

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