

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

Zavala v. Valdes

Zavala · No. 1:24-cv-01360 JLT SKO · Decided March 10, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 ANTONIO ZAVALA, Case No. 1:24-cv-01360 JLT SKO 12 Plaintiff,
ORDER ADOPTING IN FULL THE FINDINGS AND RECOMMENDATIONS DISMISSING
13 v. THE ACTION, DENYING PLAINTIFF’S REQUEST FOR EMERGENCY PROTECTIVE
14 ROBERT VALDES, ORDER, AND DIRECTING THE CLERK OF COURT TO CLOSE THE
CASE 15 Defendant.

(Docs. 7, 11) 16 17 Antonio Zavala seeks hold Robert Valdes, a Fresno police officer, liable for
violations of 18 his civil rights. The assigned magistrate judge screened Plaintiff’s complaint
pursuant to 28 19 U.S.C. § 1915(e)(2) and found Plaintiff did not state a cognizable claim. (Doc. 4
at 3-7.)

The 20 Court directed Plaintiff to file an amended complaint or notify the Court if he wished to
stand on 21 his complaint. (Id. at 8.) Plaintiff did not file an amended complaint.¹ Instead,
Plaintiff filed a 22 “Request for Emergency Protective Order” based on the same allegations made
in his complaint. 23 (See Doc. 7.)

The magistrate judge ordered Plaintiff to show cause why the action should not be 24 dismissed
for his failure to comply with the Court’s screening order and for failure to prosecute 25 this case.
(Doc. 8.) Plaintiff did not file any response to the order. 26 1 Plaintiff filed a filed a document
captioned “Request for Extension to Respond,” which purported to request to 27 extend time for
him to respond to the Court’s screening order “on a basis of conflict of interest.” (Doc.

9.) This request was denied “without prejudice to filing a renewed request that presents good
cause for an extension of time.” 28 (Doc. 10 at 2.) No other request to extend time has been made.
1 The magistrate judge found Plaintiff failed to obey Court orders and failed to prosecute 2 this
action, and recommended dismissal. (Doc. 11.)

The Court served the Findings and 3 Recommendation on Plaintiff and notified him that any
objections were due within 21 days. (Id. 4 at 2.) The Court advised him that the “failure to file
objections within the specified time may 5 result in the waiver of rights on appeal.” (Id., citing
Wilkerson v. Wheeler, 772 F.3d 834, 838-39 6 (9th Cir. 2014).) Plaintiff did not file objections,
and the time to do so has passed.

7 According to 28 U.S.C. § 636 (b)(1), the Court performed a de novo review of the case. 8 Having carefully reviewed the matter, the Court concludes the finding that Plaintiff failed to 9 comply with the Court's orders and failed to prosecute the action are supported by the record and 10 proper analysis.

In finding terminating sanctions are appropriate, the Court also considers the 11 factors outlined by the Ninth Circuit, including: "(1) the public's interest in expeditious resolution 12 of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; 13 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less 14 drastic sanctions." *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.

1986). The public's 15 interest in expeditiously resolving this litigation and the Court's interest in managing the docket 16 weigh in favor of dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) 17 ("The public's interest in expeditious resolution of litigation always favors dismissal"); *Ferdik v. 18 Bonzelet*, 963 F.2d 1258, 1261 (9th Cir.

1992) (district courts have inherent interest in managing 19 their dockets without being subject to noncompliant litigants). Because Plaintiff delayed the 20 action though his failure to obey the Court's orders, the third factor also supports dismissal. 21 Further, as the magistrate judge observed, the Court warned Plaintiff that failure to comply would 22 result in a recommendation of dismissal.

(Doc. 11 at 2, citing Doc. 8 at 2.) The Court need only 23 warn a party once that the matter could be dismissed to satisfy the requirement of considering 24 alternative sanctions. *Ferdik*, 963 F.2d at 1262. Thus, the Henderson factors weigh in favor of 25 dismissal for Plaintiff's failure to comply with the Court's orders and failure to prosecute. *Malone 26 v. U.S. Postal Service*, 833 F.2d 128, 133 n.2 (9th Cir.

1987) (explaining that although "the public 27 policy favoring disposition of cases on their merits... weighs against dismissal, it is not 28 sufficient to outweigh the other four factors"). 1 Finally, the Court denies Plaintiff's "Request for Emergency Protective Order" because, 2 | as the magistrate judge found, he did not state a cognizable claim for relief in his complaint.

3 | Consequently, Plaintiff cannot meet his burden to demonstrate a likelihood of success on the 4 | merits. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (To obtain injunctive 5 || relief, the moving party must show "that he is likely to succeed on the merits.>"). 6 Based upon the foregoing, the Court ORDERS: 7 1.

The Findings and Recommendation issued February 4, 2025 (Doc. 11) are 8 ADOPTED in full. 9 2. Plaintiffs "Request for Emergency Protective Order" (Doc. 7) is DENIED. 10 3. This action is DISMISSED due to Plaintiffs failure to obey court orders and 11 failure to prosecute this action. 12 4.

The Clerk of Court is directed to CLOSE this case. 13 4 IT IS SO ORDERED. 15 Dated: _ March
7, 2025 Charis [Tourn TED STATES DISTRICT JUDGE 16 17 18 19 20 21 22 23 24 25 26 27 28

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