

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Kristen Erwin v. Defense Health Agency

No. 2:24-cv-2126 DJC AC PS · No. No. 2:24-cv-2126 DJC AC PS · Decided June 25, 2025

SUMMARY

The United States Magistrate Judge recommends dismissing Kristen Erwin’s action against the Defense Health Agency without prejudice for failure to prosecute and failure to comply with court orders. The recommendation is based on plaintiff’s repeated failure to properly serve the defendant and failure to respond to the third order to show cause.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 25, 2025
DOCKET	No. 2:24-cv-2126 DJC AC PS
DISPOSITION	dismissed
PROCEDURAL POSTURE	A magistrate judge issued findings and recommendations recommending dismissal without prejudice for failure to prosecute and failure to comply with the court's service-of-process orders.
STANDARD OF REVIEW	Dismissal for failure to prosecute is evaluated under five factors: 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 alternatives.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Kristen Erwin v. Defense Health Agency

TOPICS

- service of process
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice for failure to prosecute and failure to comply with the court's orders requiring proper service of process.

HOLDINGS

1. Because plaintiff failed to complete proper service despite repeated instructions and failed to respond to the third order to show cause, dismissal without prejudice was warranted under Federal Rule of Civil Procedure 41(b) and Local Rule 110.

KEY QUOTATIONS

“Because this case cannot move forward without plaintiffs participation and the successful service of process upon defendant, the court finds the factors weigh in favor of dismissal.” (at 2)

“Therefore, IT IS HEREBY RECOMMENDED that this action be dismissed, without prejudice, for lack of prosecution and for failure to comply with the court’s order.” (at 2)

FACTUAL BACKGROUND

Plaintiff did not timely complete service of process on the defendant. Her subsequent service documents were improperly completed or otherwise inadequate despite repeated instructions from the court. Plaintiff failed to respond to the third order to show cause, and the action had been pending for nearly eleven months without successful service.

PROCEDURAL HISTORY

Plaintiff filed the action on August 7, 2024, paid the filing fee, and was directed to complete service within 90 days. After untimely and defective service attempts, the court issued three orders to show cause and provided instructions for proper service. Plaintiff failed to respond to the third order to show cause, leading the magistrate judge to recommend dismissal without prejudice under Federal Rule of Civil Procedure 41(b) and Local Rule 110.

DISPOSITION

dismissed

CASES CITED

- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- *Martinez v. Yist*, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 KRISTEN ERWIN, No. 2:24-cv-2126 DJC AC PS 12 Plaintiff, 13 v.
FINDINGS AND RECOMMENDATIONS 14 DEFENSE HEALTH AGENCY, 15 Defendant. 16
17 Plaintiff is proceeding in pro se and filed this case on August 7, 2024. ECF No. 1.

The 18 action was referred to the undersigned for pretrial matters by E.D. Cal. R. (“Local 19
Rule”) 302(c)(21). Plaintiff paid the filing fee and was instructed to complete service of process 20
within 90 days. ECF Nos. 2, 3. She did not timely complete service, and the undersigned issued 21
an order to show cause why this case should not be dismissed for failure to prosecute.

ECF No. 22 8. Plaintiff responded stating that she had completed service. ECF No. 9. Plaintiff’s
service was 23 improperly completed, and the court issued a second order to show cause, with
additional 24 instructions for properly completing service. ECF No. 10.

In response, plaintiff filed new service 25 documents, which were also inadequate. ECF No. 11,
12. The undersigned issued a third order 26 to show cause on June 6, 2025, again with instructions
regarding completion of service. ECF No. 27 13. Plaintiff did not respond. 28 This case was filed
nearly eleven months ago, and plaintiff has not successfully served the 1 | defendant despite ample
instruction from the court.

Accordingly, the undersigned concludes that 2 || this case cannot proceed and must be dismissed
for failure to prosecute. 3 In recommending this action be dismissed for failure to prosecute, the
court has 4 || considered “(1) the public's interest in expeditious resolution of litigation; (2) the
court’s need to 5 || manage its docket; (3) the risk of prejudice to the defendants; (4) the public
policy favoring 6 || disposition of cases on their merits; and (5) the availability of less drastic
alternatives.” *Ferdik v. 7 || Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.

1992) (citation omitted). Because this case cannot 8 | move forward without plaintiffs participation
and the successful service of process upon 9 || defendant, the court finds the factors weigh in favor
of dismissal. 10 Therefore, IT IS HEREBY RECOMMENDED that this action be dismissed,
without 11 | prejudice, for lack of prosecution and for failure to comply with the court’s order.

See Fed. R. 12 || Civ. P. 41(b); Local Rule 110. 13 These findings and recommendations are
submitted to the United States District Judge 14 || assigned to this case, pursuant to the provisions
of 28 U.S.C. § 636(b)(1). Within twenty-one 15 || (21) days after being served with these findings
and recommendations, plaintiff may file written 16 || objections with the court.

Such document should be captioned “Objections to Magistrate Judge’s 17 || Findings and
Recommendations.” Local Rule 304(d). Plaintiff is advised that failure to file 18 || objections
within the specified time may waive the right to appeal the District Court’s order. 19 | *Martinez v.*
Yist, 951 F.2d 1153 (9th Cir. 1991). 20 | DATED: June 24, 2025 ~ 71 MnCl ALLISON CLAIRE
22 UNITED STATES MAGISTRATE JUDGE 23 24 25 26 27 28

