

**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

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**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.

**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