

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PRECEDENTIAL VALUE	nonprecedential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)