

**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

OPINION

(PS) Erwin v. Defense Health Agency

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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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”) 19
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

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