

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Schowachert v. Santoro

No. 1:21-cv-01168 GSA (PC) (E.D. Cal. July 24, 2025) · No. 1:21-cv-01168 GSA (PC) · Decided July 24, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing this 42 U.S.C. § 1983 action without prejudice for failure to prosecute. The recommendation relies on Federal Rule of Civil Procedure 41(b), Local Rule 110, and the Ninth Circuit’s Malone factors, and gives the plaintiff fourteen days to file objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Gary S. Austin
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 24, 2025
DOCKET	1:21-cv-01168 GSA (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal without prejudice for failure to prosecute after a pro se prisoner failed to respond to a screening order.
STANDARD OF REVIEW	The court applied the discretionary five-factor test governing dismissal for failure to comply with a court order: 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 sanctions.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	John Paul Frank Schowachert v. Kelley Santoro, et al.

TOPICS

- sanctions
- civil procedure
- section 1983
- prisoners rights
- civil rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) and Local Rule 110 because Plaintiff failed to respond to the court's screening order.
2. Whether application of the Ninth Circuit's five Malone factors supported dismissal for failure to prosecute.

HOLDINGS

1. A plaintiff's failure to respond to a court order within the allotted time, failure to request an extension, and failure to take any of the alternatives provided by the court warranted dismissal without prejudice for failure to prosecute and supported dismissal as a sanction under Rule 41(b) and Local Rule 110.
2. The five Malone factors supported dismissal without prejudice because the case had stalled, consumed limited judicial resources, posed no meaningful prejudice to unserved defendants, and could not proceed further without Plaintiff's participation.

KEY QUOTATIONS

“A district court must weigh five factors in determining whether to dismiss a case for failure to comply with a court order: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.”” (at 2-3)

“For these reasons, consistent with Federal Rule of Civil Procedure 41(b) and Local Rule 110, and having considered the Malone factors, the undersigned recommends that this matter be dismissed without prejudice for failure to prosecute.” (at 5)

FACTUAL BACKGROUND

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brought a § 1983 civil-rights action. On May 19, 2025, the court screened the complaint and determined that it failed to state a claim, giving Plaintiff thirty days to amend, stand on the complaint, or voluntarily dismiss it. Plaintiff did not respond, seek an extension, or file a change of address; the screening order was not returned as undeliverable, and prison records indicated that Plaintiff remained incarcerated at his address of record.

PROCEDURAL HISTORY

Plaintiff filed a civil-rights action under 42 U.S.C. § 1983. The court screened the complaint and found that it failed to state a claim, then gave Plaintiff thirty days to amend, stand on the complaint, or voluntarily dismiss the action. Plaintiff took none of those actions and did not request an extension, leading the magistrate judge to recommend dismissal without prejudice under Federal Rule of Civil Procedure 41(b) and Local Rule 110.

DISPOSITION

CASES CITED

- Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995)
- Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)
- Thompson v. Housing Authority of City of Los Angeles, 782 F.2d 829 (9th Cir. 1986) (per curiam)
- Whitaker v. Superior Court of San Francisco, 514 U.S. 208, 210 (1994)
- Rosenthal v. Walker, 111 U.S. 185, 193 (1884)
- Nunley v. City of Los Angeles, 52 F.3d 792, 796 (9th Cir. 1995)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Martinez v. Ylst, 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 JOHN PAUL FRANK SCHOWACHERT, No. 1:21-cv-01168 GSA (PC) 12
Plaintiff, ORDER AND FINDINGS AND RECOMMENDATIONS 13 v. ORDER
RECOMMENDING MATTER BE 14 KELLEY SANTORO, et al., DISMISSED FOR FAILURE
TO PROSECUTE 15 Defendants. PLAINTIFF’S OBJECTIONS DUE IN 16 FOURTEEN DAYS
17 18 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil 19
rights action seeking relief under 42 U.S.C. § 1983.

The matter was referred to a United States 20 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 302. 21 For the reasons stated below, the undersigned will recommend that this
matter be 22 dismissed for failure to prosecute. Plaintiff will be given fourteen days to file
objections to this 23 order. 24 I. RELEVANT FACTS 25 On May 19, 2025, Plaintiff’s complaint
was screened, and the undersigned found that it 26 failed to state a claim upon which relief could
be granted.

ECF No. 12. As a result, Plaintiff was 27 given the opportunity either to amend the complaint, to
stand on it, or to voluntarily dismiss it. 28 Id. at 9. Plaintiff was given thirty days to take one of
these courses of action. Id. 1 More than thirty days have now passed and Plaintiff has not taken
any of the three courses 2 of action, nor has he requested an extension of time to do so.

Plaintiff has not responded to the 3 Court’s order in any way. Furthermore, the Court takes judicial
notice¹ of the facts that: (1) 4 Plaintiff has not filed a change of address with the Court; (2) the
Court’s screening order was not 5 returned to it marked “undeliverable,” thus, it is presumed to
have been received,² and (3) a 6 search for Plaintiff in the California Department of Corrections
and Rehabilitation’s (“CDCR”) 7 inmate database under his prison identification number,
BK1296, indicates that he is still 8 incarcerated at his address of record.³ 9 II.

APPLICABLE LAW 10 A. Federal Rule of Civil Procedure 41(b) and Local Rule 110 11 Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails 12 to prosecute or he fails to comply with a court order. See Fed. R. Civ. P. 41(b). Local Rule 110 13 also permits the imposition of sanctions when a party fails to comply with a court order.

L.R. 14 110. Only in rare cases will an appellate court question the exercise of discretion in connection 15 with the application of local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) 16 (upholding dismissal of case pursuant to district court local rule because plaintiff failed to file 17 opposition to defendants' motion to compel/motion to dismiss).

18 B. *Malone Factors* 19 The Ninth Circuit has clearly identified the factors to consider when dismissing a case for 20 failure to comply with a court order. It writes: 21 A district court must weigh five factors in determining whether to dismiss a case 22 for failure to comply with a court order: "(1) the public's interest in expeditious 23 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on 24 their merits; and (5) the availability of less drastic sanctions." 25 1 See Fed.

R. Evid. 201 (court may take judicial notice of facts that are capable of accurate determination by sources whose accuracy cannot reasonably be questioned). 26 2 See *Rosenthal v. Walker*, 111 U.S. 185, 193 (1884); *Nunley v. City of Los Angeles*, 52 F.3d 27 792, 796 (9th Cir. 1995) (citing *Rosenthal*) 3 See <https://ciris.mt.cdcr.ca.gov/results?cdcrNumber=BK1296>(verification Plaintiff is still in 28 CDCR custody) (last visited 7/23/25).

1 2 *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (quoting *Thompson v. 3 Hous. Auth. of City of Los Angeles*, 782 F.2d 829 (9th Cir. 1986) (per curiam)). 4 III. DISCUSSION 5 A. Rule 41(b) and Local Rule 110 Support Dismissal of This Case 6 The fact that Plaintiff has: (1) failed to file a response to the Court's screening order, and 7 (2) failed to request an extension of time to do so within the time allotted, both collectively 8 warrant dismissal of this matter, in accord with Rule 41(b).

This inaction on Plaintiff's part also 9 warrants the imposition of sanctions in the form of dismissal of this case, consistent with Local 10 Rule 110. 11 B. Application of *Malone Factors* Supports the Dismissal of This Case 12 1. Expeditious Resolution of Litigation; Court's Need to Manage Its Docket 13 Plaintiff has been given more than ample time to file a response to Court's screening 14 order, either by filing an amended complaint; by notifying the Court that he wishes to stand on 15 the screened complaint, or by voluntarily dismissing this action.

Despite this fact, Plaintiff has 16 failed to take any of these steps, nor has he contacted the Court to provide exceptional reasons for 17 not having done so. 18 The Eastern District Court has an unusually large caseload.⁴ "[T]he goal of fairly 19 dispensing justice... is compromised when the

Court is forced to devote its limited resources to 20 the processing of frivolous and repetitious requests.” Whitaker v. Superior Court of San 21 Francisco, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted).

Thus, it follows that 22 keeping this case on the Court’s docket when Plaintiff’s complete inaction in response to the 23 24 4 The Eastern District of California carries one of the largest and most heavily weighted caseloads in the nation. See Office of the Clerk, United States District Court, Eastern District of 25 California, 2024 Annual Report, “Weighted Filings,” p. 35 (2024) (“[O]ur weighted caseload far exceeds the national average... ranking us fourth in the nation and first in the Ninth Circuit.”).

26 This problem is compounded by a shortage of jurists to review its pending matters. See generally 27 id. (stating 2024 Biennial Judgeship Survey recommended request for four additional permanent judgeships for Eastern District of California). 28 1 Court’s screening order indicates that he has no interest in prosecuting this case in a timely 2 manner, is not a good use of the Court’s already taxed resources.

Moreover, keeping this matter 3 on the docket until Plaintiff chooses to respond would clearly be an exercise in futility, and it 4 would stall a quicker disposition of this case. Finally, in fairness to the many other litigants who 5 currently have cases before the Court, no additional time should be spent on this matter, 6 irrespective of any opposition to the instant recommendation of dismissal that Plaintiff might file 7 after the issuance of this order.

8 2. Risk of Prejudice to Defendants 9 Furthermore, because viable Defendants have yet to be identified and served in this case, 10 no one has put time and effort into defending against it. As a result, there will be no prejudice to 11 anyone other than Plaintiff if the matter is dismissed.

On the contrary, dismissal will benefit any 12 potentially viable Defendants because they will not have to defend themselves against Plaintiff’s 13 complaint. 14 3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on 15 Merits 16 Finally, Plaintiff has failed to respond to the Court’s screening order for over two months, 17 and during that period he has not indicated that he has an interest in continuing to prosecute this 18 case.

Given the facts that the Court’s screening order served on Plaintiff was not returned to it 19 marked “undeliverable,” and that Plaintiff has not filed a notice of change of address with the 20 Court since the screening order issued, these facts permit the Court to find that Plaintiff received 21 its screening order, but that he is simply choosing not to respond to it.

See generally Local Rule 22 182(f) (stating absent notice otherwise, service of documents at prior address of pro se party is 23 fully effective). 24 The Court’s finding that Plaintiff is simply choosing not to respond to the Court’s orders 25 and prosecute this case is further supported by the fact that as noted above, Plaintiff is still in the 26 CDCR’s custody.

Thus, in the aggregate, without Plaintiff continuing to take an active role to 27 move forward the very case that he brought, this matter cannot be prosecuted any further, nor can 28 it be disposed of on its merits. 1 IV. CONCLUSION 2 For these reasons, consistent with Federal Rule of Civil Procedure 41(b) and Local Rule 3 110, and having considered the Malone factors, the undersigned recommends that this matter be 4 dismissed without prejudice for failure to prosecute.

Plaintiff shall be given fourteen days to file 5 objections to this order. 6 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a 7 District Judge to this matter. 8 IT IS FURTHER RECOMMENDED that: 9 1. This matter be DISMISSED without prejudice for failure to prosecute. See Fed. R. 10 Civ. P. 41(b) and Local Rule 110, and 11 2. This case be CLOSED.

12 These findings and recommendations are submitted to the United States District Judge 13 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days 14 after being served with these findings and recommendations, Plaintiff may file written objections 15 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings 16 and Recommendations,” and it shall not exceed fifteen pages.

17 //// 18 The Court will not consider exhibits attached to the objections. To the extent that Plaintiff 19 wishes to refer to any exhibit, when possible, Plaintiff must reference the exhibit in the record by 20 its CM/ECF document and page number or reference the exhibit with specificity. Any pages filed 21 in excess of the fifteen-page limit may be disregarded by the District Judge when conducting the 22 28 U.S.C. § 636(b)(l)(C) review of the findings and recommendations.

Plaintiff’s failure to file 23 objections within the specified time may result in the waiver of certain rights on appeal. See 24 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014); Martinez v. Ylst, 951 F.2d 1153 (9th 25 Cir. 1991). 26 27 28 1 IT IS SO ORDERED. 2 3 Dated: July 24, 2025 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28