

**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

OPINION

(PC) Schowachert v. Santoro

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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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 search for Plaintiff in the California Department of Corrections and Rehabilitation’s (“CDCR”) inmate database under his prison identification number, BK1296, indicates that he is still 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 not having done so. The Eastern District Court has an unusually large caseload.⁴ “[T]he goal of fairly dispensing justice . . . is compromised when the Court is forced to devote its limited resources to the processing of frivolous and repetitious requests.” *Whitaker v. Superior Court of San Francisco*, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted). Thus, it follows that keeping this case on the Court’s docket when Plaintiff’s complete inaction in response to the Court’s screening order compounds the problem. 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 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.”). This problem is compounded by a shortage of jurists to review its pending matters. See generally *id.* (stating 2024 Biennial Judgeship Survey recommended request for four additional permanent judgeships for Eastern District of California). Court’s screening order indicates that he has no interest in prosecuting this case in a timely manner, is not a good use of the Court’s already taxed resources. Moreover, keeping this matter on the docket until Plaintiff chooses to respond would clearly be an exercise in futility, and it would stall a quicker disposition of this case. Finally, in fairness to the many other litigants who currently have cases before the Court, no additional time should be spent on this matter, irrespective of any opposition to the instant recommendation of dismissal that Plaintiff might file after the issuance of this order.

2. Risk of Prejudice to Defendants Furthermore, because viable Defendants have yet to be identified and served in this case, no one has put time and effort into defending against it. As a result, there will be no prejudice to anyone other than Plaintiff if the matter is dismissed. On the contrary, dismissal will benefit any potentially viable Defendants because they will not have to defend themselves against Plaintiff’s complaint.

3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on Merits Finally, Plaintiff has failed to respond to the Court’s screening order for over two months, and during that period he has not indicated that he has an interest in continuing to prosecute this case. Given the facts that the Court’s screening order served on Plaintiff was not returned to it marked “undeliverable,” and that Plaintiff has not filed a notice of change of address with the Court since the screening order issued, these facts permit the Court to find that Plaintiff received its screening order, but that he is simply choosing not to respond to it. See generally Local Rule 182(f) (stating absent notice otherwise, service of documents at prior address of pro se party is fully effective). The Court’s finding that Plaintiff is simply choosing not to respond to the Court’s orders and prosecute this case is further supported by the fact that as noted above, Plaintiff is still in the CDCR’s custody. Thus, in the aggregate, without Plaintiff continuing to take an active role to move forward the very case that he brought, this matter cannot be prosecuted any further, nor can 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

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