

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gilmore v. Castillo

Gilmore · No. 1:21-cv-00617 JLT GSA (PC) · Decided August 29, 2025

SUMMARY

The document contains findings and recommendations by a United States Magistrate Judge in a prisoner civil rights action under 42 U.S.C. § 1983. It recommends granting the defendant's motion for terminating sanctions under Federal Rule of Civil Procedure 37(b)(2)(A)(v) and dismissing the action with prejudice because the plaintiff failed to comply with discovery orders and prosecute the case.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 EDWARD D. GILMORE, No. 1:21-cv-00617 JLT GSA (PC) 12 Plaintiff,
FINDINGS AND RECOMMENDATIONS 13 v. ORDER RECOMMENDING THAT: 14 D.
CASTILLO, (1) DEFENDANT'S MOTION FOR TERMINATING SANCTIONS PURSUANT
15 Defendant. TO FEDERAL RULE OF CIVIL PROCEDURE 37(b)(2)(A)(v) BE GRANTED,
16 AND 17 (2) THIS ACTION BE DISMISSED WITH PREJUDICE 18 PLAINTIFF'S
OBJECTIONS DUE IN 19 FOURTEEN DAYS 20 21 Plaintiff, a state prisoner proceeding pro se
and in forma pauperis, has filed this civil 22 rights action seeking relief under 42 U.S.C. § 1983.

The matter was referred to a United States 23 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 302. 24 Before this Court is Defendant's motion for terminating sanctions
pursuant to Federal 25 Rule of Civil Procedure 37(b)(2)(A)(v). ECF No. 40.

For the reasons stated below, the 26 undersigned will recommend that Defendant's motion be
granted and that this case be dismissed 27 with prejudice. Plaintiff shall have fourteen days to file
objections to this order. 28 I. RELEVANT PROCEDURAL HISTORY 1 A. Complaint Screening
and Extensions of Time to File Amended Complaint 2 On May 17, 2023, Plaintiff's complaint was
screened, and he was directed either to file an 3 amended complaint or to inform the Court that he
wished to proceed on the complaint as 4 screened.

ECF No. 12. Plaintiff was given thirty days to take either course of action. See *id.* at 5 16. 6
Thereafter, Plaintiff requested and was granted three extension of time requests: two for 7 sixty
days and one for thirty days. See ECF Nos. 13, 15, 17 (Plaintiff's extension of time 8 requests);
see also ECF Nos. 15, 16, 18 (Court's grants of same). At that point, Plaintiff's 9 amended
complaint was to have been filed by December 20, 2023.

ECF No. 18 at 2. 10 B. Findings and Recommendations to Dismiss for Failure to Prosecute and for 11 Failure to Obey Court Order 12 Plaintiff failed to file a timely amended complaint. As a result, on January 2, 2024, the 13 undersigned issued an order which recommended that the matter be dismissed for failure to obey 14 a court order and for failure to prosecute.

ECF No. 20. The same day, a “supplemental 15 complaint” filed by Plaintiff was docketed. ECF No. 21. As the title of the document indicated, 16 it was not the amended complaint that the Court had ordered Plaintiff to file. See generally *id.* It 17 was simply a document which informed the Court what had occurred in Plaintiff’s case after he 18 had filed the complaint.

See ECF No. 21 at 1 (Plaintiff’s supplement stating same). As a result, 19 instead of withdrawing the findings and recommendations order, the undersigned opted to wait 20 and see if Plaintiff would either go ahead and file an amended complaint or opt to proceed on the 21 initial complaint, the two options that the May 2023 screening order had given Plaintiff and that 22 he had been given more than ample time from which to choose.

23 C. Order Declining to Adopt Findings and Recommendations 24 More than a month passed and Plaintiff failed to file an amended complaint, nor did he 25 file a notice with the Court indicating that he wished to proceed on the complaint as it had been 26 screened.

On February 8, 2024, the District Judge assigned to this action declined to adopt the 27 undersigned’s findings and recommendation. ECF No. 22. Instead, the District Judge found that 28 Plaintiff’s “supplemental complaint” could be construed as a request to proceed on his cognizable 1 claims, and also found that with the filing of the “supplemental complaint,” Plaintiff had 2 attempted to comply with the order of the Court.

Id. at 2. The Court gave Plaintiff an additional 3 time to either file an amended complaint or file a notice that he wished to proceed on the 4 complaint as screened. *Id.* at 3-4. As a result, Plaintiff was to take one of the two courses of 5 action no later than March 31, 2024. See *id.* at 3.

In addition, Plaintiff’s request within the 6 “supplemental complaint” requesting he be allowed to supplement his original complaint pursuant 7 to Federal Rule of Civil Procedure 15(d) (see ECF No. 21 at 1), was also denied by the Court (see 8 ECF No. 22 at 3). 9 D. Notice to Proceed on Complaint as Screened 10 On April 8, 2024, Plaintiff’s notice which stated that he wished to proceed on the 11 complaint as it had been screened back on May 17, 2023, was docketed.¹ See ECF No. 23.

The 12 next day, the complaint was ordered served. See ECF No. 24. 13 E. Defendant’s Opt Out of Early ADR; Commencement of Discovery 14 On August 9, 2024, Defendant moved to opt out of the Court’s Early Alternative Dispute 15 Resolution Program, and the motion was granted shortly thereafter. ECF Nos. 29, 30 16 (Defendant’s opt out motion; Court’s grant of same, respectively).

Thereafter, Defendant's 17 answer to the complaint was filed on September 13, 2024 (ECF No. 31). The Court then issued a 18 discovery and scheduling order for the case (ECF No. 32). In it, discovery was to end on 19 December 6, 2024, and motions to compel were due the same day. Id. at 6. 20 F. Extension of Time Requests Filed; Extension of Motion to Compel Date 21 On November 25, 2024, Plaintiff filed a motion for a sixty-to-ninety-day extension of time 22 to respond to Defendant's requests for admission.

ECF No. 34. Approximately one week later, 23 the motion was granted, and Plaintiff was given a sixty-day extension. Id. at 2. As a result, 24 Plaintiff's responses to Defendant's requests for admissions were due January 31, 2025, and 25 1 Plaintiff signed the notice on March 29, 2024. See ECF No. 23.

As a result, it was constructively filed with the Court on that date. See *Roberts v. Marshall*, 627 F.3d 768, 769 n.1 26 (9th Cir. 2010) (stating constructive filing date for prisoner giving pleading to prison authorities is 27 date pleading is signed); *Jenkins v. Johnson*, 330 F.3d 1146, 1149 n.2 (9th Cir. 2003), overruled on other grounds by *Pace v. DiGuglielmo*, 544 U.S. 408 (2005).

28 1 motions to compel were due March 14, 2025. Id. Pretrial motions were to be filed by May 16, 2 2025. Id. 3 On May 14, 2025, Defendant filed a motion for a thirty-one-day extension of time to file a 4 motion for summary judgment. ECF No. 36.

The motion was granted the same day, making 5 Defendant's dispositive motion due June 16, 2025. See ECF No. 37. Thereafter, on June 2, 6 2025, Defendant filed a motion for an extension of time for him to file, nunc pro tunc, a motion to 7 compel. ECF No. 38.

The motion to compel was attached to the request for an extension of time. 8 See id. at 38-2 at 5-28. The motion was granted three days later, and the Court ordered Plaintiff 9 to respond to Defendant's motion to compel, 2 and to do so within thirty days. ECF No. 39 at 2. 10 As a result, Plaintiff's response to Defendant's motion to compel was due July 7, 2025. 3 11 G. Defendant's Motion for Terminating Sanctions; Plaintiff's Failure to Respond 12 On July 24, 2025, Defendant filed the instant motion for terminating sanctions pursuant to 13 Federal Rule of Civil Procedure 37(b)(2)(A)(v).

ECF No. 40. The motion informs the Court that 14 Plaintiff had failed to file and/or serve a response to his discovery requests as he was ordered to 15 do. Id. at 4-8. As a result, Defendant requests that the Court dismiss this case due to Plaintiff's 16 failure to comply with the Court's orders and with the Federal Rules of Civil Procedure. Id. at 5- 17 8.

In the alternative, Defendant requests that the Court order Plaintiff to respond fully to 18 Defendant's discovery requests within fourteen days, and to do so without objections. 4 Id. at 8. 19 Consistent with Local Rule 230(l), Plaintiff's response to Defendant's motion for terminating 20

sanctions was due on August 14, 2025. See Local Rule 230(l) giving parties twenty-one days to 21 file responses to motions when litigant is prisoner.

Importantly, this deadline was pointed out to 22 Plaintiff in the Court's July 29, 2025 order wherein Plaintiff was also cautioned that failure to 23 comply with the order that he file a response to Defendant's motion for terminating sanctions 24 2 At the time, Plaintiff was directed either to serve Defendant directly with his discovery 25 responses or to file with the Court a response to Defendant's motion to compel.

See ECF No. 39 at 2. 26 3 Because the thirtieth day fell on Saturday, July 5, 2025, Plaintiff had until Monday, July 7, 27 2025, to respond to Defendant's motion to compel. See Fed. R. Civ. P. 6(a)(1)(A)-(C). 4 Defendant also asks for additional time to file a motion for summary judgment should the Court 28 opt not to dismiss this matter. ECF No. 40 at 8. 1 would likely result in a recommendation that Defendant's motion for terminating sanctions be 2 granted.

See. ECF No. 42 at 4. 3 H. Defendant's Notice of Plaintiff's Failure to Respond to Defendant's Motion 4 On August 21, 2025, Defendant filed the instant notice of Plaintiff's failure to respond to 5 his motion for terminating sanctions. ECF No. 43.

In it, Defendant points out: (1) that to date, 6 Plaintiff has neither served Defendant with a response to Defendant's motion for terminating 7 sanctions nor filed any with the Court, and (2) that in the Court's July 29, 2025, order which 8 directed Plaintiff to file a response to his motion for terminating sanctions, the Court warned 9 Plaintiff that his failure to comply with the order within the time allotted would likely result in a 10 recommendation that this matter be dismissed.

Id. at 1. For these reasons, Defendant asks that 11 the Court dismiss this matter in its entirety. Id. at 1-2. 12 To date, Plaintiff has not filed a response to Defendant's motion for terminating sanctions, 13 nor has he requested an extension of time to do so. 14 II. APPLICABLE LAW 15 A. Federal Rule of Civil Procedure 37(b)(2)(A)(v) 16 Federal Rule of Civil Procedure 37(b)(2)(A)(v) states: 17 (b) Failure to Comply With a Court Order.

18 19 (2) Sanctions Sought in the District Where the Action Is Pending. 20 (A) For Not Obeying a Discovery Order. If a party or a party's 21 officer, director, or managing agent--or a witness designated under Rule 30(b)(6) or 31(a)(4)--fails to obey an order to provide or permit discovery, 22 including an order under Rule 26(f), 35, or 37(a), the court where the action 23 is pending may issue further just orders.

They may include the following: 24 (v) dismissing the action in whole or in part... 25 26 Fed. R. Civ. P. 37(b)(2)(A)(v) (emphasis in original). 27 Rule 37 is one of the sources of authority under which a district court may sanction a party 28 who has not produced evidence. See generally *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th 1 Cir. 2006). A dismissal pursuant to Rule 37 is reviewed for an abuse of discretion.

Anheuser- 2 Busch, Inc. v. Nat. Beverage Distributors, 69 F.3d 337, 348 (9th Cir. 1995). 3 4 B. Malone Factors 5 The Ninth Circuit has identified the factors to consider when dismissing a case for failure 6 to comply with a court order, discovery or otherwise. It writes: 7 A district court must weigh five factors in determining whether to dismiss a case 8 for failure to comply with a court order: “(1) the public’s interest in expeditious 9 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 10 their merits; and (5) the availability of less drastic sanctions.” 11 12 Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir.

1987) (quoting Thompson v. 13 Hous. Auth. of City of Los Angeles, 782 F.2d 829 (9th Cir. 1986) (per curiam)). In Anheuser- 14 Busch, Inc. v. Nat. Beverage Distributors, 69 F.3d 337 (9th Cir. 1995), the Ninth Circuit also 15 identified some factors to consider when determining whether lesser sanctions had been 16 considered prior to dismissal. It wrote: 17 In determining whether the district court properly considered lesser sanctions prior 18 to dismissing a party’s case, we examine: (1) whether the district court explicitly discussed the feasibility of less drastic sanctions and explained why such alternate 19 sanctions would be inappropriate; (2) whether the district court implemented 20 alternative sanctions before ordering dismissal; and (3) whether the district court warned the party of the possibility of dismissal before ordering dismissal.

21 22 Id., 69 F.3d at 352 (citing Adriana Int’l Corp. v. Thoeren, 913 F.2d 1406, 1412–13 (9th Cir. 23 1990). 24 C. Federal Rule of Civil Procedure 41(b) and Local Rules 110 25 Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails 26 to prosecute or if he fails to comply with a court order. See Fed. R. Civ. P. 41(b). Local Rule 27 110 also permits the imposition of sanctions when a party fails to comply with a court order.

L.R. 28 1 110. 2 III. DISCUSSION 3 The undersigned will recommend that Defendant’s motion for terminating sanctions be 4 granted as Federal Rules of Civil Procedure Rule 37 (b)(2)(A)(v) and 41(b), Malone, and Local 5 Rule 110 all support the dismissal of this case. 6 A. Rule 37(b)(2) (A)(v) Supports the Dismissal of This Case 7 As Defendant points out, throughout the discovery process, Plaintiff has been given ample 8 opportunities to comply with the Court’s orders and respond to Defendant’s discovery requests.

9 See ECF No. 40 at 3-4 (Defendant’s chronology of discovery-related events). The 10 aforementioned record of events, which are documented on the Court’s docket also verify this 11 finding. To date, however, Defendant states that Plaintiff has not responded to his discovery 12 requests, nor has Plaintiff responded to Defendant’s motion for terminating sanctions.

13 When a party fails to obey a discovery orders, Rule 37(b)(2)(A)(v) permits the dismissal 14 of the action in its entirety. Thus, a grant of Defendant’s request for terminating sanctions is 15 supported by Rule 37. 16 B. Application of Malone Factors Supports the Dismissal of This Case

17 1. Expeditious Resolution of Litigation; Court's Need to Manage Its Docket 18 Plaintiff has been given more than ample time to provide responses to Defendant's 19 discovery requests.

First, he was given a sixty-day extension of time to respond to the 20 Defendant's Request for Admissions, which was granted. See ECF Nos. 34, 35 (Plaintiff's 21 extension request; Court's grant of same). Then, after Defendant filed a motion to extend Nunc 22 Pro Tunc the deadline in which to file a motion to compel simultaneous filing with it the motion 23 the motion to compel (see ECF No. 38, at1), the Court, sua sponte, granted Plaintiff an additional 24 thirty days to either directly serve Defendant with responses to "all the discovery requests in 25 question", or to file with the Court a response to Defendants motion to compel. (see ECF No. 39 26 at 2).

Despite having been given additional time to comply with the Court's orders by responding 27 to Defendant's discovery requests, Plaintiff has failed to do so, has not contacted the Court to 28 provide exceptional reasons for not having done so, nor requested additional time to do so. 1 The Eastern District Court has an unusually large caseload.⁵ "[T]he goal of fairly 2 dispensing justice... is compromised when the Court is forced to devote its limited resources to 3 the processing of frivolous and repetitious requests." Whitaker v. Superior Court of San 4 Francisco, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted).

Thus, it follows that 5 keeping this case on the Court's docket is not a good use of the Court's already taxed resources. 6 Indeed, keeping this matter on the Court's docket would be futile and would unnecessarily 7 prolong the disposition of this case given that Plaintiff appears to have abandoned it. 8 Additionally, in fairness to the many other litigants who currently have cases before the Court, no 9 additional time should be spent on this matter.

10 2. Risk of Prejudice to Defendant 11 Furthermore, Defendant has consistently defended himself throughout these proceedings, 12 responding to the Court's orders to file an answer to Plaintiff's complaint (see ECF Nos. 27, 31) 13 (Court's order to file answer; Defendant's answer, respectively), and filing for an extension of 14 time to file a motion for summary judgment (see ECF 36).

To require Defendant to continue to 15 put more time and energy into defending himself against claims that Plaintiff has brought against 16 him would be highly unfair to him, especially given that it is clear that Plaintiff no longer has an 17 interest in prosecuting this case.

Thus, dismissing this matter will eliminate any injustice and/or 18 prejudice that Defendant has incurred to date. 19 3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on 20 Merits 21 Finally, as Defendant also points out (see ECF No. 43 at 1), on July 29, 2025, when the 22 Court ordered Plaintiff to file a response to Defendant's motion for terminating sanctions, 23 Plaintiff was warned that his failure to timely comply with the order would likely result in a 24 5

The Eastern District of California carries one of the largest and most heavily weighted 25 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 26 exceeds the national average... ranking us fourth in the nation and first in the Ninth Circuit.”). 27 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 28 judgeships for Eastern District of California).

1 recommendation that Defendant’s motion for terminating sanctions be granted (see ECF 2 No. 42 at 4) (Court’s order stating same). Thus, Plaintiff was clearly made aware that the 3 dismissal of his case was likely if his failure to prosecute this matter persisted.

In sum, there is no 4 less drastic option than dismissal. Although the disposition of cases on their merits is preferred, 5 this matter cannot be prosecuted if Plaintiff continues not to respond to the most fundamental of 6 court orders, nor can this case be disposed of on its merits. 7 C. Rule 41(b) and Local Rule 110 Support the Dismissal of This Case 8 Rule 41(b) also supports the dismissal of this matter.

It states that when a plaintiff fails to 9 prosecute a matter or he fails to obey court orders, a defendant may move to dismiss the case. 10 See Fed. R. Civ. P. 41(b). That is precisely what has happened here. A dismissal on these 11 grounds may operate as an adjudication of the matter on its merits. *Id.* Accordingly, a dismissal 12 of this matter with prejudice is also supported by Rule 41(b).

13 Finally, Local Rule 110 permits the imposition of sanctions when a party fails to comply 14 with a court order. See *id.* As previously noted, Plaintiff has failed to comply with the Court’s 15 discovery orders. Consequently, a dismissal of this matter is warranted under Local Rule 110 as 16 well. 17 Accordingly, IT IS HEREBY RECOMMENDED that: 18 1. Defendant’s motion for terminating sanctions (ECF No. 40) be GRANTED, consistent 19 with Federal Rules of Civil Procedure 37(b)(2)(A)(v) and 41(b); *Malone v. United States Postal* 20 Service, 833 F.2d 128, 130 (9th Cir.

1987), and Local Rule 110; 21 2. This matter be DISMISSED with prejudice, and 22 3. This case be CLOSED. 23 These findings and recommendations are submitted to the United States District Judge 24 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 25 after being served with these findings and recommendations, any party may file written 26 objections with the Court.

Such a document should be captioned “Objections to Magistrate 27 Judge’s Findings and Recommendations,” and it shall not exceed fifteen pages. 28 The Court will not consider exhibits

attached to the objections. To the extent that a party 1 wishes to refer to any exhibit, when possible, the party must reference the exhibit in the record by 2 its CM/ECF document and page number or reference the exhibit with specificity.

Any pages filed 3 in excess of the fifteen-page limit may be disregarded by the District Judge when conducting the 4 28 U.S.C. § 636(b)(1)(C) review of the findings and recommendations. A party's failure to file 5 objections within the specified time may result in the waiver of certain rights on appeal. See 6 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.

2014); *Martinez v. Ylst*, 951 F.2d 1153 (9th 7 Cir. 1991). 8 9 10 IT IS SO ORDERED. 11 12 Dated: August 29, 2025 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28