

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Davis v. Rodriguez

No. 1:25-cv-00368-BAM (PC) (E.D. Cal. May 12, 2025) · No. 1:25-cv-00368-BAM (PC) · Decided May 12,
2025

OPINION

(PC) Davis v. Rodriguez

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 CORNELL E. DAVIS, Case No. 1:25-cv-00368-BAM (PC) 12 Plaintiff, ORDER
DIRECTING CLERK OF COURT TO

RANDOMLY ASSIGN DISTRICT JUDGE TO

13 v. ACTION

14 RODRIGUEZ, et al., FINDINGS AND RECOMMENDATIONS TO

DISMISS ACTION, WITHOUT PREJUDICE,

15 Defendants. FOR FAILURE TO OBEY COURT ORDER

AND FAILURE TO PROSECUTE

16 (ECF No. 5) 17

FOURTEEN (14) DAY DEADLINE

18 19 I. Background 20 Plaintiff Cornell E. Davis (“Plaintiff”) is a state prisoner proceeding pro
se in this civil 21 rights action pursuant to 42 U.S.C. § 1983. 22 On March 31, 2025, the Court
issued an order directing Plaintiff to submit a completed 23 application to proceed in forma
pauperis or pay the \$405.00 filing fee to proceed with this action. 24 (ECF No. 5.) The Court
expressly warned Plaintiff that failure to comply with the Court’s order 25 would result in
dismissal of this action without prejudice. (Id.) The deadline has expired, and 26 Plaintiff has
failed to respond to the Court’s order or otherwise communicate with the Court 27 regarding his
application or payment of the filing fee. 28 /// 1 II. Failure to Prosecute and Failure to Obey a
Court Order 2 A. Legal Standard 3 Local Rule 110 provides that “[f]ailure . . . of a party to
comply with these Rules or with 4 any order of the Court may be grounds for imposition by the
Court of any and all sanctions . . . 5 within the inherent power of the Court.” District courts have
the inherent power to control their 6 dockets and “[i]n the exercise of that power they may impose
sanctions including, where 7 appropriate, . . . dismissal.” Thompson v. Hous. Auth., 782 F.2d 829,
831 (9th Cir. 1986). A 8 court may dismiss an action, with prejudice, based on a party’s failure to
prosecute an action, 9 failure to obey a court order, or failure to comply with local rules. See, e.g.,

Ghazali v. Moran, 46 10 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 11 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring 12 amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987) 13 (dismissal for failure to comply with court order). 14 In determining whether to dismiss an action, the Court must consider several factors: 15 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its 16 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of 17 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779 18 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988). 19 B. Discussion 20 Here, Plaintiff’s application to proceed in forma pauperis or payment of the filing fee is 21 overdue and he has failed to comply with the Court’s order. The Court cannot effectively manage 22 its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first and 23 second factors weigh in favor of dismissal. 24 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a 25 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. 26 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against 27 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d 28 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose 1 responsibility it is to move a case toward disposition on the merits but whose conduct impedes 2 progress in that direction,” which is the case here. In re Phenylpropanolamine (PPA) Products 3 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). 4 Finally, the Court’s warning to a party that failure to obey the court’s order will result in 5 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262; 6 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s March 31, 2025 order 7 expressly warned Plaintiff that his failure to comply with the Court’s order would result in 8 dismissal of this action. (ECF No. 5.) Thus, Plaintiff had adequate warning that dismissal could 9 result from his noncompliance. 10 Additionally, at this stage in the proceedings there is little available to the Court that 11 would constitute a satisfactory lesser sanction while protecting the Court from further 12 unnecessary expenditure of its scarce resources. Plaintiff has not paid the filing fee, or would be 13 proceeding in forma pauperis in this action, apparently making monetary sanctions of little use, 14 and the preclusion of evidence or witnesses is likely to have no effect given that Plaintiff has 15 ceased litigating his case. 16 III. Recommendation 17 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a 18 District Judge to this action. 19 Further, the Court finds that dismissal is the appropriate sanction and HEREBY 20 RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court 21 order and for Plaintiff’s failure to prosecute this action. 22 These Findings and Recommendation will be submitted to the United States District Judge 23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen 24 (14) days after being served with these Findings and Recommendation, Plaintiff may file written

25 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s 26 Findings and Recommendation.” Objections, if any, shall not exceed fifteen (15) pages or 27 include exhibits. Exhibits may be referenced by document and page number if already in 28 the record before the Court. Any pages filed in excess of the 15-page limit may not be 1 considered. The parties are advised that failure to file objections within the specified time may 2 result in the waiver of the “right to challenge the magistrate’s factual findings” on 3 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing Baxter v. Sullivan, 4 923 F.2d 1391, 1394 (9th Cir. 1991)). 5 IT IS SO ORDERED. 6 7 Dated: May 12, 2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

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