

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

McElroy v. George

McElroy · No. 1:24-cv-00982 · Decided June 12, 2025

OPINION

(PC) McElroy v. George

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 EIBON MCELROY,) Case No.: 1:24-cv-00982 JLT HBK) 12 Plaintiff,) ORDER
DISMISSING ACTION WITHOUT

) PREJUDICE AND DIRECTING THE CLERK OF

13 v.) COURT TO CLOSE THE CASE

) 14 GEORGE, et al.,)) 15 Defendants.)) 16) 17 Eibon Mc Elroy seeks to hold the defendants
liable for violations of his civil right to adequate 18 medical care. (Doc. 1.) Because Plaintiff
failed to prosecute this action and failed to obey the Court’s 19 order, as discussed below, the
action is DISMISSED without prejudice. 20 I. Relevant Background 21 When Plaintiff initiated
the action, he did not pay the filing fee. (Doc. 3.) The assigned 22 magistrate judge ordered
Plaintiff to either apply to proceed in forma pauperis or pay the filing fee. 23 (Id.) On November
11, 2024, Plaintiff filed a motion to proceed in forma pauperis. (Doc. 6.) 24 However, the
magistrate judge found that Plaintiff had at least three “strikes” pursuant to 28 U.S.C. § 25
1915(g). (Doc. 8 at 2.) Therefore, the magistrate judge issued Findings and Recommendations that
26 Plaintiff’s application to proceed in forma pauperis be denied and Plaintiff be directed to pay
the 27 \$405.00 filing fee. (Id. at 4.) The Court adopted those Findings and Recommendations in
full on

28 April 3, 2025, and ordered Plaintiff to pay the filing fee within thirty (30) days. (Doc. 12.)

1 On April 4, 2025, Plaintiff moved for an extension of time to file objections to the Findings 2
and Recommendations. (Doc. 13.) On May 8, 2025, the Court denied that motion because it had 3
already adopted the Findings and Recommendations. (Doc. 14 at 1). The Court also ordered that 4
Plaintiff pay the filing fee within fourteen (14) days. (Id.). The Court warned: “Plaintiff is advised
5 that failure to pay the required filing fee as ordered will result in the dismissal of this action 6
without prejudice.” (Id. at 2, emphasis in original.) To date, Plaintiff has not paid the filing fee. 7
II. Failure to Prosecute and Obey the Court’s Orders 8 The Local Rules, corresponding with Fed.
R. Civ. P. 11, provide: “Failure of counsel or of a 9 party to comply with . . . any order of the

Court may be grounds for the imposition by the Court of any 10 and all sanctions . . . within the inherent power of the Court.” LR 110. “District courts have inherent 11 power to control their dockets,” and in exercising that power, a court may impose sanctions including 12 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 13 1986). A court may dismiss an action based on a party’s failure to prosecute, failure to obey a court 14 order, or failure to comply with local rules. See, e.g., *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 15 1995) (dismissal for failure to comply with local rules); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 16 (9th Cir. 1992) (dismissal for failure to comply with an order); *Henderson v. Duncan*, 779 F.2d 1421, 17 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules). 18

III. Discussion and Analysis 19 To determine whether to impose terminating sanctions for Plaintiff’s failure to prosecute and 20 failure to comply with the Court’s order, the Court must consider several factors, including: “(1) the 21 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) 22 the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their 23 merits; and (5) the availability of less drastic sanctions.” *Henderson*, 779 F.2d at 1423-24; see also 24 *Ferdik*, 963 F.2d at 1260-61; *Thomson*, 782 F.2d at 831. 25

A. Public interest and the Court’s docket 26 In the case at hand, the public’s interest in expeditiously resolving this litigation and the 27 Court’s interest in managing the docket weigh in favor of dismissal. See *Yourish v. Cal. Amplifier*, 28 191 F.3d 983, 990 (9th Cir. 1999) (“The public’s interest in expeditious resolution of litigation always 1 favors dismissal”); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in 2 managing their dockets without being subject to noncompliant litigants). This Court cannot and will 3 not hold this case in abeyance where Plaintiff fails to prosecute the claims. See *Morris v. Morgan 4 Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991) (a plaintiff has the burden “to move toward... 5 disposition at a reasonable pace, and to refrain from dilatory and evasive tactics”). Accordingly, these 6 factors weigh in favor of dismissal of the action. 7

B. Prejudice to Defendants 8 To determine whether the defendant suffer prejudice, the Court must “examine whether the 9 plaintiff’s actions impair the ... ability to go to trial or threaten to interfere with the rightful decision of 10 the case.” *Malone v. U.S. Postal Service*, 833 F.2d 128, 131 (9th Cir. 1987) (citing *Rubin v. Belo 11 Broadcasting Corp.*, 769 F.2d 611, 618 (9th Cir. 1985)). Significantly, a presumption of prejudice 12 arises when a plaintiff unreasonably delays the prosecution of an action. See *Anderson v. Air West*, 542 13 F.2d 522, 524 (9th Cir. 1976). The Ninth Circuit observed, “this factor lends little support to a party 14 whose responsibility it is to move a case toward disposition on the merits but whose conduct impedes 15 progress in that direction.” In re *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 16 1217, 1228 (9th Cir. 2006). Plaintiff did not pay the filing fee and continues to not comply with the 17 Court’s orders. Defendants would suffer prejudice if the action would continue without such 18 procedural protections. Therefore, this factor weighs in favor of dismissal of the action. 19

C. Consideration of less drastic sanctions 20 The Court “abuses its discretion if it imposes a sanction of dismissal

without first considering the impact of the sanction and the adequacy of less drastic sanctions.” United States v. Nat’l Medical Enterprises, Inc., 792 F.2d 906, 912 (9th Cir. 1986). However, a court’s warning to a party that the failure to obey could result in dismissal satisfies the “consideration of alternatives” requirement. See Malone, 833 F.2d at 133; Ferdik, 963 F.2d at 1262. As the Ninth Circuit explained, “a plaintiff can hardly be surprised” by a sanction of dismissal “in response to willful violation of a pretrial order.” Malone, 833 F.2d at 133. The Court warned Plaintiff that “failure to pay the required filing fee as ordered will result in the dismissal of this action without prejudice.” (Doc. 13 at 2, emphasis omitted.) Thus, the Court clearly indicated terminating sanctions may be imposed. Importantly, the Court need only warn a party once that the matter could be dismissed for failure to comply to satisfy the requirements of Rule 41.3 Ferdik, 963 F.2d at 1262; see also Titus v. Mercedes Benz of North America, 695 F.2d 746, 749 n.6 4th Cir. 1982) (identifying a “warning” as an alternative sanction). Accordingly, the warning satisfies the requirement that the Court consider lesser sanctions, and this factor weighs in favor of dismissal of the action. See Ferdik, 963 F.2d at 1262; Henderson, 779 F.2d at 1424; Titus, 695 F.2d at 749 n.6. D. Public policy Given Plaintiff’s failures—including to prosecute the action and comply with the Court’s order concerning amendment and the payment of fees—the policy favoring disposition of cases on their merits is outweighed by the factors in favor of dismissal. See Malone, 833 F.2d at 133, n.2 (explaining that although “the public policy favoring disposition of cases on their merits... weighs against dismissal it is not sufficient to outweigh the other four factors”). IV. Conclusion and Order For the reasons set forth above, the Court finds terminating sanctions are appropriate. Accordingly, the Court ORDERS: 1. This action is DISMISSED without prejudice. 2. The Clerk of Court is directed to close this case. IT IS SO ORDERED. Dated: June 12, 2025 (LAW pA L. wan

TED STATES DISTRICT JUDGE

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