

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Palmer v. Zanoni

Palmer · No. 1:23-cv-01004 GSA (PC) · Decided July 24, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Marlon Palmer’s 42 U.S.C. § 1983 action without prejudice for failure to obey court orders and failure to prosecute. The recommendation applies Federal Rule of Civil Procedure 41(b), relevant Eastern District local rules, and the Malone dismissal factors. The court also orders random assignment of a district judge and allows 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	1:23-cv-01004 GSA (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A pro se prisoner brought a civil-rights action under 42 U.S.C. § 1983. After the plaintiff failed to comply with orders requiring him to update his address and show cause why the action should not be dismissed, the magistrate judge issued findings and recommendations recommending dismissal without prejudice for failure to prosecute and failure to obey court orders.
STANDARD OF REVIEW	The court applied the Ninth Circuit's five-factor test for dismissal for failure to comply with a court order: the public's 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PRECEDENTIAL VALUE	Nonprecedential or limited; magistrate judge's findings and recommendations in a prisoner civil-rights action.
PARTIES	Marlon Palmer v. John Zanoni

TOPICS

sanctions civil procedure section 1983 civil rights

PRACTICE AREAS

civil procedure prisoner civil rights civil rights federal courts

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) and the applicable local rules because plaintiff failed to obey court orders.
2. Whether dismissal was warranted for failure to prosecute after plaintiff failed to keep the court apprised of his current address and failed to respond to the order to show cause.
3. Whether consideration of the Malone factors supported dismissal and whether a lesser sanction was available.

HOLDINGS

1. A court may recommend dismissal without prejudice under Federal Rule of Civil Procedure 41(b) and the applicable local rules when a plaintiff fails to maintain a current address, fails to comply with an order requiring a current-address notice, and fails to respond to an order to show cause.
2. The Malone factors supported dismissal because plaintiff's noncompliance delayed resolution, burdened the court's docket, caused no meaningful prejudice to unserved defendants, and left no less drastic effective sanction.

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)

"It is a plaintiff's responsibility to keep a court apprised of his current address at all times." (at 3)

"Finally, given that Plaintiff has had sufficient time to respond to the Court's order to show cause, there is no less drastic option than dismissal." (at 5)

FACTUAL BACKGROUND

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, filed a § 1983 action in July 2023. In March 2025, the court ordered him to file a current-address notice after a significant period had elapsed, but the order was returned as undeliverable. Plaintiff then failed to update his address within the applicable period and did not respond to a June 2025 order to show cause, which was sent to his address at Salinas Valley State Prison and was not returned as undeliverable. Defendants had not yet been served or incurred litigation effort.

PROCEDURAL HISTORY

Plaintiff filed the complaint and an application to proceed in forma pauperis on July 5, 2023. The court granted in forma pauperis status, later ordered plaintiff to file a current-address notice, and then issued an order to show cause after plaintiff failed to comply. Plaintiff did not respond to either order, and the magistrate judge recommended dismissal without prejudice under Federal Rule of Civil Procedure 41(b) and Local Rules 110, 182(f), and 183(b), subject to objections and review by an assigned district judge.

DISPOSITION

other

CASES CITED

- 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)
- Busquets-Ivars v. Ashcroft, 333 F.3d 1008, 1010 (9th Cir. 2003)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

(PC) Palmer v. Zanoni

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 MARLON PALMER, No. 1:23-cv-01004 GSA (PC)

12 Plaintiff, ORDER AND FINDINGS AND

RECOMMENDATIONS

13 v.

ORDER RECOMMENDING MATTER BE

14 JOHN ZANONI, DISMISSED FOR FAILURE TO OBEY

COURT ORDERS AND FOR FAILURE TO

15 Defendant. PROSECUTE 16 (See ECF Nos. 8, 9)

17 PLAINTIFF’S OBJECTIONS DUE IN

FOURTEEN DAYS

18 19 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil 20
rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States 21
Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 22 For the reasons

stated below, the undersigned will recommend that this matter be dismissed due to Plaintiff's failure to obey court orders and for failure to prosecute. Plaintiff will have fourteen days to file objections to this order.

I. RELEVANT FACTS

On July 5, 2023, Plaintiff's complaint and his application to proceed in forma pauperis were docketed in this Court. ECF Nos. 1, 2. Shortly thereafter, on July 6, 2023, Plaintiff's application to proceed in forma pauperis was granted. ECF No. 4. On October 4, 2023, Plaintiff's address was updated on the docket based on a change of address form that Plaintiff had filed in a different matter he has in this Court. See ECF No. 7. The new address informed the Court that Plaintiff was incarcerated at Salinas Valley State Prison ("SVSP"). A. Plaintiff Ordered to File Notice of Current Address On March 12, 2025, because a significant amount of time had passed since Plaintiff had filed his case in this Court, prior to screening Plaintiff's complaint, the Court ordered him to file a notice of current address and to do so within seven days. ECF No. 8. On April 2, 2025, the Court's order was returned to it marked "Undeliverable, Return to Sender, Not Deliverable as Addressed; Unable to Forward." See 4/2/25 docket entry. At that point, Plaintiff had thirty days to file a notice of change of address with the Court. See Local Rule 183(b). B. Plaintiff Ordered to File Showing of Cause Plaintiff failed to file a notice of current address with the Court within the thirty-day period. As a result, on June 5, 2025, the Court issued an order directing Plaintiff to show cause why this matter should not be dismissed for failure to obey a court order and for failure to keep the Court apprised of his current address. ECF No. 9. As an alternative to filing the showing of cause, Plaintiff was given the opportunity either to file a notice of current address with the Court or to voluntarily dismiss the case. *Id.* at 3. The order was sent to the new address that Plaintiff had placed on file. See 6/5/25 NEF (indicating order sent to SVSP address). Plaintiff was given fourteen days to take either course of action. *Id.* To date, Plaintiff has not responded to either of the Court's orders, nor has he requested extensions of time to do so. Plaintiff has not responded to the Court's orders in any way. In addition, the Court notes for the record that its order that directed Plaintiff to file a showing of cause has not been returned to it marked "undeliverable," either.

II. APPLICABLE LAW

A. Federal Rule of Civil Procedure 41(b) and Local Rules 110, 182(f) and 183(b) Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails to prosecute or he fails to comply with a court order. See Fed. R. Civ. P. 41(b). Local Rule 110 also permits the imposition of sanctions when a party fails to comply with a court order. L.R. 2 110. Local Rule 182(f) permits service to be effective service at a prior address if a party fails to notify the Court and other parties of his address change. *Id.* Finally, Local Rule 183(b) gives a party who appears in propria persona a period of time to file a notice of change of address if some of his mail is returned to the Court. *Id.* B. Malone Factors The Ninth Circuit has clearly identified the factors to consider when dismissing a case for failure to comply with a court order. It writes:

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.” *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (quoting *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829 (9th Cir. 1986) (per curiam)).

III. DISCUSSION

A. Rule 41(b) and Local Rules 110, 182(f) and 183(b) Support Dismissal of This Case

Although the docket indicates that: (1) Plaintiff’s copy of the minute order directing him to file a notice of current address to the Court was returned to it marked “Undeliverable, Return to Sender, Not Deliverable as Addressed, Unable to Forward,” Plaintiff was properly served. It is a plaintiff’s responsibility to keep a court apprised of his current address at all times. Pursuant to Local Rule 182(f), service of documents at the record address of the party is fully effective. Furthermore, given that the second order issued which directed Plaintiff to show cause why this matter should not be dismissed was not returned to the Court, yet to date, Plaintiff has filed no response to it,¹ these facts, in total, support a finding that Plaintiff has likely abandoned this case.

1 A search for Plaintiff by his prison identification number, BA5878, on the California 1 This warrants its dismissal in accord with Rule 41(b) and Local Rules 110, 182(f), and 183(b).

2 B. Application of Malone Factors Supports the Dismissal of This Case

1. Expeditious Resolution of Litigation; Court’s Need to Manage Its Docket

4 Plaintiff has been given sufficient time to file a notice of change of address as well as to 5 respond to the Court’s order that ordered him to show cause why this matter should not be 6 dismissed. Despite this fact, he has failed to do either, nor has he contacted the Court to provide 7 exceptional reasons for not having done so. 8 The Eastern District Court has an unusually large caseload.² “[T]he goal of fairly 9 dispensing justice . . . is compromised when the Court is forced to devote its limited resources to 10 the processing of frivolous and repetitious requests.” *Whitaker v. Superior Court of San 11 Francisco*, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted). Thus, it follows that 12 keeping this case on the Court’s docket when Plaintiff has not attempted either to verify his 13 current address or to file a response to the Court’s order to show cause, is not a good use of its 14 already taxed resources. Indeed, keeping this matter on the Court’s docket would stall a quicker 15 disposition of this case. Additionally, in fairness to the many other litigants who currently have 16 cases before the Court, no additional time should be spent on this matter.

17 2. Risk of Prejudice to Defendants

18 Furthermore, because the Defendants against whom Plaintiff has stated viable claims have 19 yet to be served in this case, no one has put time and effort into defending against it. As a result, 20 there will be no prejudice to anyone other than Plaintiff if the matter is dismissed. On the 21 Department of Corrections and Rehabilitation website indicates that he is still incarcerated at SVSP. See <https://ciris.mt.cdcr.ca.gov/results?cdcrNumber=BA5878> (last visited 7/23/25). 22

Therefore, the Court presumes that Plaintiff received its order to show cause. See *Rosenthal v. Walker*, 111 U.S. 185, 193 (1884) (stating letter shown to have been properly delivered to postman is presumed to have reached its destination and to have been received by addressee); *24 Busquets-Ivars v. Ashcroft*, 333 F.3d 1008, 1010 (9th Cir. 2003) (citing *Rosenthal*). 2 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 contrary, dismissal will benefit those Defendants because they will not have to defend themselves 2 against Plaintiff’s complaint. 3 3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on 4 Merits 5 Finally, given that Plaintiff has had sufficient time to respond to the Court’s order to show 6 cause, there is no less drastic option than dismissal. Although the disposition of cases on their 7 merits is preferred, this matter cannot be prosecuted without participation by Plaintiff, nor can it 8 be disposed of on its merits.

9 IV. CONCLUSION

10 For these reasons, consistent with Federal Rule of Civil Procedure 41(b) and Local Rules 11 110, 182(f) and 183(b), and having considered the Malone factors, the undersigned recommends 12 that this matter be dismissed without prejudice for failure to obey court orders and for failure to 13 prosecute. See *id.* Plaintiff will have fourteen days to file objections to this order. 14 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a 15 District Judge to this matter. 16 IT IS FURTHER RECOMMENDED that this matter be DISMISSED without prejudice 17 for failure to prosecute and for failure to obey court orders. See Fed. R. Civ. P. 41(b) and Local 18 Rules 110, 182(f) and 183(b).

19 These findings and recommendations are submitted to the United States District Judge 20 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 21 after being served with these findings and recommendations, Plaintiff may file written objections 22 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings 23 and Recommendations,” and it shall not exceed fifteen pages. 24 The Court will not consider exhibits attached to the objections. To the extent that Plaintiff 25 wishes to refer to any exhibit, when possible, Plaintiff must reference the exhibit in the record by 26 its CM/ECF document and page number or reference the exhibit with specificity. Any pages filed 27 in excess of the fifteen-page limit may be disregarded by the District Judge when conducting the 28 28 U.S.C. § 636(b)(1)(C) review of the findings and recommendations. Plaintiff’s failure to file 1 objections within the specified time may result in the waiver of certain rights on appeal. See 2 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014); *Martinez v. Ylst*, 951 F.2d 1153 (9th

3 Cir. 1991).

4 IT IS SO ORDERED. 5

6 Dated: July 23, 2025 /s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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