

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Palmer v. Zanon

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

OPINION

(PC) Palmer v. Zanon

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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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 23 dismissed due to Plaintiff’s
failure to obey court orders and for failure to prosecute. Plaintiff will 24 have fourteen days to file
objections to this order. 25

I. RELEVANT FACTS

26 On July 5, 2023, Plaintiff’s complaint and his application to proceed in forma pauperis 27 were
docketed in this Court. ECF Nos. 1, 2. Shortly thereafter, on July 6, 2023, Plaintiff’s 28 1
application to proceed in forma pauperis was granted. ECF No. 4. On October 4, 2023, 2
Plaintiff’s address was updated on the docket based on a change of address form that Plaintiff had
3 filed in a different matter he has in this Court. See ECF No. 7. The new address informed the 4
Court that Plaintiff was incarcerated at Salinas Valley State Prison (“SVSP”). 5 A. Plaintiff
Ordered to File Notice of Current Address 6 On March 12, 2025, because a significant amount of

time had passed since Plaintiff had 7 filed his case in this Court, prior to screening Plaintiff's complaint, the Court ordered him to file a 8 notice of current address and to do so within seven days. ECF No. 8. On April 2, 2025, the 9 Court's order was returned to it marked "Undeliverable, Return to Sender, Not Deliverable as 10 Addressed; Unable to Forward." See 4/2/25 docket entry. At that point, Plaintiff had thirty days 11 to file a notice of change of address with the Court. See Local Rule 183(b). 12 B. Plaintiff Ordered to File Showing of Cause 13 Plaintiff failed to file a notice of current address with the Court within the thirty-day 14 period. As a result, on June 5, 2025, the Court issued an order directing Plaintiff to show cause 15 why this matter should not be dismissed for failure to obey a court order and for failure to keep 16 the Court apprised of his current address. ECF No. 9. As an alternative to filing the showing of 17 cause, Plaintiff was given the opportunity either to file a notice of current address with the Court 18 or to voluntarily dismiss the case. *Id.* at 3. The order was sent to the new address that Plaintiff 19 had placed on file. See 6/5/25 NEF (indicating order sent to SVSP address). Plaintiff was given 20 fourteen days to take either course of action. *Id.* 21 To date, Plaintiff has not responded to either of the Court's orders, nor has he requested 22 extensions of time to do so. Plaintiff has not responded to the Court's orders in any way. In 23 addition, the Court notes for the record that its order that directed Plaintiff to file a showing of 24 cause has not been returned to it marked "undeliverable," either.

25 II. APPLICABLE LAW

26 A. Federal Rule of Civil Procedure 41(b) and Local Rules 110, 182(f) and 183(b) 27 Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails 28 to prosecute or he fails to comply with a court order. See Fed. R. Civ. P. 41(b). Local Rule 110 1 also permits the imposition of sanctions when a party fails to comply with a court order. L.R. 2 110. 3 Local Rule 182(f) permits service to be effective service at a prior address if a party fails 4 to notify the Court and other parties of his address change. *Id.* Finally, Local Rule 183(b) gives a 5 party who appears in propria persona a period of time to file a notice of change of address if some 6 of his mail is returned to the Court. *Id.* 7 B. Malone Factors 8 The Ninth Circuit has clearly identified the factors to consider when dismissing a case for 9 failure to comply with a court order. It writes: 10 A district court must weigh five factors in determining whether to dismiss a case 11 for failure to comply with a court order: "(1) the public's interest in expeditious 12 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 13 their merits; and (5) the availability of less drastic sanctions." 14 15 *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (quoting *Thompson v. 16 Hous. Auth. of City of Los Angeles*, 782 F.2d 829 (9th Cir. 1986) (*per curiam*)).

17 III. DISCUSSION

18 A. Rule 41(b) and Local Rules 110, 182(f) and 183(b) Support Dismissal of This 19 Case 20 Although the docket indicates that: (1) Plaintiff's copy of the minute order directing him 21 to file a notice of current address to the Court was returned to it marked "Undeliverable, Return to 22

Sender, Not Deliverable as Addressed, Unable to Forward,” Plaintiff was properly served. It is a
23 plaintiff’s responsibility to keep a court apprised of his current address at all times. Pursuant to
24 Local Rule 182(f), service of documents at the record address of the party is fully effective. 25
Furthermore, given that the second order issued which directed Plaintiff to show cause why this
26 matter should not be dismissed was not returned to the Court, yet to date, Plaintiff has filed no
27 response to it,¹ these facts, in total, support a finding that Plaintiff has likely abandoned this
case. 28 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 3 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. 23 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)(l). 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)(l)(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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