

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

Hoke v. Nunez

Hoke · No. 2:25-cv-0275-JDP (P) · Decided July 7, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissal without prejudice of Michael Laurence Hoke’s action against M. Nunez and others. The recommendation is based on failure to prosecute, failure to comply with court orders requiring an amended complaint, and failure to state a claim.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 MICHAEL LAURENCE HOKE, Case No. 2:25-cv-0275-JDP (P) 12
Plaintiff, 13 v. ORDER; FINDINGS AND RECOMMENDATIONS 14 M. NUNEZ, et al., 15
Defendants. 16 17 On April 16, 2025, I screened plaintiff’s complaint and notified him that the
complaint 18 failed to state a claim. ECF No. 5.

I ordered him to file, within thirty days, an amended 19 complaint or a notice of voluntary
dismissal. Id. Plaintiff failed to timely file an amended 20 complaint or otherwise to respond to the
court order. Therefore, on May 29, 2025, I ordered 21 plaintiff to show cause why this action
should not be dismissed for his failure to prosecute, failure 22 to comply with court orders, and
failure to state a claim.

ECF No. 8. I notified plaintiff that if he 23 wished to continue with this lawsuit, he must file an
amended complaint. I also warned plaintiff 24 that failure to comply with the May 29, 2025 order
would result in a recommendation that this 25 action be dismissed. Id. The deadline for plaintiff to
file an amended complaint and response to 26 the order to show cause has passed without word
from plaintiff.

27 The court has the inherent power to control its docket and may, in the exercise of that 28
power, impose sanctions where appropriate, including dismissal. *Bautista v. Los Angeles Cnty.*, 1
216 F.3d 837, 841 (9th Cir. 2000); see Local Rule 110 (“Failure of counsel or of a party to 2
comply with these Rules or with any order of the Court may be grounds for imposition by the 3
Court of any and all sanctions... within the inherent power of the Court.”).

4 A court may dismiss an action based on a party’s failure to prosecute an action, failure to 5 obey
a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 6 (9th

Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 7 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended 8 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.

1988) (dismissal for failure to 9 comply with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone v. 10 U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court 11 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of 12 prosecution and failure to comply with local rules).

13 In recommending that this action be dismissed for failure to comply with court orders, I 14 have considered “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s 15 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy 16 favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.” 17 *Ferdik*, 963 F.2d at 1260-61 (citation omitted).

18 Here, plaintiff has failed to respond to court orders directing him to file an amended 19 complaint. See ECF Nos. 5 & 8. Therefore, the public interest in expeditious resolution of 20 litigation, the court’s need to manage its docket, and the risk of prejudice to the defendants all 21 support imposition of the sanction of dismissal. Lastly, the court’s warning to plaintiff that 22 failure to obey court orders will result in dismissal satisfies the “considerations of the 23 alternatives” requirement.¹ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 at 132-33; *Henderson*, 779 24 F.2d at 1424.

Plaintiff had adequate warning that dismissal could result from his noncompliance. 25 Accordingly, I find that the balance of factors weighs in favor of dismissal. 26 27 1 The May 29, 2025 order expressly warned plaintiff that his failure to comply with court 28 orders would result in dismissal. ECF No. 8. 1 Accordingly, it is hereby ORDERED that the Clerk of Court randomly assign a district 2 | judge to this action.

3 Further, it is hereby RECOMMENDED that: 4 1. This action be DISMISSED without prejudice for failure to prosecute, failure to 5 | comply with court orders, and failure to state a claim for the reasons set forth in the April 16, 6 | 2025 order. See ECF No. 5. 7 2.

The Clerk of Court be directed to close the case. 8 These findings and recommendations are submitted to the United States District Judge 9 | assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of 10 | service of these findings and recommendations, any party may file written objections with the 11 | court and serve a copy on all parties.

Any such document should be captioned “Objections to 12 | Magistrate Judge’s Findings and Recommendations,” and any response shall be served and filed 13 | within fourteen days of service of the objections. The parties are advised that failure to file 14 | objections within the

specified time may waive the right to appeal the District Court’s order. See 15 | Turner v. Duncan, 158 F.3d 449, 455 (9th Cir.

1998); Martinez v. Yist, 951 F.2d 1153 (9th Cir. 16 1991). 17 18 IT IS SO ORDERED. 19 (q Sty
— Dated: _ July 7, 2025 q—— 20 JEREMY D. PETERSON UNITED STATES
MAGISTRATE JUDGE 22 23 24 25 26 27 28