

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Rodriguez-Mendez v. Kerney

Rodriguez-Mendez · No. No. 2:24-CV-0678-DC-DMC-P · Decided August 20, 2025

OPINION

(PC) Rodriguez-Mendez v. Ellred, et al

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 RODRIGO RODRIGUEZ-MENDEZ, No. 2:24-CV-0678-DC-DMC-P

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 KERNEY, et al., 15 Defendants. 16 17 Plaintiff, a prisoner proceeding pro se, brings this civil
rights action pursuant to 18 Bivens v. Six Unknown Agents, 403 U.S. 388 (1971). 19 On June 13,
2025, the Court determined that Plaintiff's complaint was appropriate 20 for service and directed
Plaintiff to submit documents for service by the United States Marshal 21 within 30 days. Plaintiff
was warned that failure to submit the required documents may result in 22 dismissal of this action
for lack of prosecution and failure to comply with court rules and orders. 23 See Local Rule 110.
To date, Plaintiff has not complied. 24 The Court must weigh five factors before imposing the
harsh sanction of dismissal. 25 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.
2000); Malone v. U.S. Postal 26 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1)
the public's interest in 27 expeditious resolution of litigation; (2) the court's need to manage its
own docket; (3) the risk of 28 prejudice to opposing parties; (4) the public policy favoring
disposition of cases on their merits; 1 | and (5) the availability of less drastic sanctions. See id.; see
also Ghazali v. Moran, 46 F.3d 52, 2 | 53 (th Cir. 1995) (per curiam). A warning that the action
may be dismissed as an appropriate 3 || sanction is considered a less drastic alternative sufficient
to satisfy the last factor. See Malone, 4 | 833 F.2d at 132-33 & n.1. The sanction of dismissal for
lack of prosecution is appropriate where 5 || there has been unreasonable delay. See Henderson v.
Duncan, 779 F.2d 1421, 1423 (9th Cir. 6 || 1986). Dismissal has also been held to be an
appropriate sanction for failure to comply with an 7 || order to file an amended complaint. See
Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 8 | 1992). 9 Having considered these factors,
and in light of Plaintiffs failure to submit service 10 || documents as directed, the Court finds that
dismissal of this action is appropriate. 11 Based on the foregoing, the undersigned recommends

that this action be dismissed, 12 || without prejudice, for lack of prosecution and failure to comply with court rules and orders. 13 These findings and recommendations are submitted to the United States District 14 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b) (1). Within 14 days 15 || after being served with these findings and recommendations, any party may file written 16 || objections with the court. Responses to objections shall be filed within 14 days after service of 17 || objections. Failure to file objections within the specified time may waive the right to appeal. See 18 | Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 19 20 | Dated: August 19, 2025 Co

21 DENNIS M. COTA

02 UNITED STATES MAGISTRATE JUDGE

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