

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Dias v. Avila

Dias · No. 1:24-cv-00354-KES-SAB · Decided March 4, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Sean Dias’s pro se civil rights action with prejudice under Federal Rule of Civil Procedure 41(b) and Local Rule 110. The recommendation is based on Plaintiff’s failure to file an amended complaint after being granted leave to amend and warned that noncompliance could result in dismissal.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 4, 2025
DOCKET	1:24-cv-00354-KES-SAB
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal with prejudice of a pro se civil-rights action after the plaintiff failed to file an amended complaint as ordered.
STANDARD OF REVIEW	The court applied the five-factor framework governing involuntary dismissal under Federal Rule of Civil Procedure 41(b): the public 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PRECEDENTIAL VALUE	nonprecedential

TOPICS

- default
- sanctions
- civil procedure
- section 1983
- civil rights

PRACTICE AREAS

- civil procedure
- civil rights
- federal courts
- remedies

QUESTIONS PRESENTED

1. Whether the action should be involuntarily dismissed with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with a court order.
2. Whether the relevant Rule 41(b) dismissal factors support dismissal after the plaintiff failed to amend despite an express warning that noncompliance could result in dismissal with prejudice.

HOLDINGS

1. A federal court may involuntarily dismiss an action under Federal Rule of Civil Procedure 41(b) when a litigant fails to prosecute the action or fails to comply with a court order, and dismissal may be imposed sua sponte under appropriate circumstances.
2. Dismissal with prejudice was warranted because the Rule 41(b) factors supported dismissal and the district court had expressly warned plaintiff that failure to timely amend could result in dismissal with prejudice.

KEY QUOTATIONS

“the consensus among our sister circuits, with which we agree, is that courts may dismiss under Rule 41(b), sua sponte, at least under certain circumstances.” (at 1)

“trial courts do not have time to waste on multiple failures by aspiring litigants to follow the rules and requirements of our courts.” (at 2)

FACTUAL BACKGROUND

Plaintiff was proceeding pro se in an action brought in part under 42 U.S.C. § 1983. After the district judge granted defendants' motion to dismiss, plaintiff was given leave to amend and expressly warned that failure to file a timely amended complaint could result in dismissal with prejudice. Plaintiff did not comply with the January 6, 2025 order, and more than thirty days passed without an amended complaint or other response.

PROCEDURAL HISTORY

Plaintiff filed an action in part under 42 U.S.C. § 1983. The assigned district judge adopted findings and recommendations granting defendants' motion to dismiss, granted plaintiff leave to amend, and warned that failure to timely amend could result in dismissal with prejudice. After more than thirty days passed without an amended complaint, the magistrate judge recommended dismissal with prejudice for failure to prosecute and failure to comply with a court order, subject to objections and review by the assigned district judge.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The magistrate judge recommended dismissal with prejudice and directed that the findings and recommendations be submitted to the assigned district judge under 28 U.S.C. § 636(b)(1). Plaintiff

was given fourteen days after service to file objections.

CASES CITED

- Applied Underwriters v. Lichtenegger, 913 F.3d 884, 889 (9th Cir. 2019)
- Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005)
- Applied Underwriters v. Lichtenegger, 913 F.3d 884, 890 (9th Cir. 2019)
- Malone v. U.S. Postal Service, 833 F.2d 128, 130-31 (9th Cir. 1987)
- Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- Yourish v. California Amplifier, 191 F.3d 983, 990-91 (9th Cir. 1999)
- Pagtalunan v. Galaza, 291 F.3d 639, 644 (9th Cir. 2002)
- Sibron v. New York, 392 U.S. 40, 57 (1968)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

Dias v. Avila

PER CURIAM.

1 2 3 4 5 6 7 8

UNITED STATES DISTRICT COURT

9

10 EASTERN DISTRICT OF CALIFORNIA

11 SEAN DIAS Case No. 1:24-cv-00354-KES-SAB 12 Plaintiff, FINDINGS AND
RECOMMENDATIONS

13 RECOMMENDING DISMISSAL OF

v. ACTION

14 WILLIAM AVILA, et al., (ECF No. 14) 15 Defendants. 16 17 Plaintiff is proceeding pro se in
this action filed pursuant, in part, to 42 U.S.C. § 1983. 18 On January 6, 2025, the assigned district
judge adopted in full this Court’s findings and 19 recommendations recommending granting
Defendants’ motion to dismiss. (ECF No. 14.) In its 20 order, the district judge gave Plaintiff leave
to amend but admonished Plaintiff that he is 21 “warned that failure to timely file an amended
complaint may result in the dismissal of this 22 action with prejudice.” (Id. at p. 2.) (emphasis in
original). The district judge concluded by 23 ordering that “[t]his matter is referred to the assigned
magistrate judge for further proceedings.” 24 (Id. at p. 3.) 25 More than thirty days have passed,
and Plaintiff has not complied with the district judge’s

26 January 6, 2025 order. The Court will now recommend that this matter be dismissed with
27 prejudice for failure to prosecute as well as failure to comply with a court order. / / / 1 I.

2 DISCUSSION

3 Federal Rule of Civil Procedure 41(b) permits courts to involuntarily dismiss an action 4 when a
litigant fails to prosecute an action or fails to comply with a court order. See Fed. R. Civ. 5 P.
41(b); see also *Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 (9th Cir. 2019) 6
(citations omitted); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 7
2005) (“[T]he consensus among our sister circuits, with which we agree, is that courts may 8
dismiss under Rule 41(b) sua sponte, at least under certain circumstances.”). Similarly, Local
9 Rule 110 permits courts to impose sanctions on a party who fails to comply with a court order.
10 Further, the procedural rules that govern this Court are to be “construed, administered and 11
employed by the court . . . to secure the just, speedy, and inexpensive determination of every 12
action and proceeding.” Fed. R. Civ. P. 1. 13 Before dismissing an action under Fed. R. Civ. P. 41,
a court must consider: (1) the 14 public interest in expeditious resolution of litigation; (2) the
court’s need to manage a docket; (3) 15 the risk of prejudice to defendant; (4) public policy
favoring disposition on the merits; and (5) 16 the availability of less drastic sanctions. See *Applied*
Underwriters, 913 F.3d at 890 (noting that 17 these five factors “must be considered” before a
Rule 41 involuntary dismissal); *Malone v. U.S. 18 Postal Service*, 833 F.2d 128, 130-31 (9th Cir.
1987) (reviewing the five factors and 19 independently reviewing the record because the district
court did not make finding as to each). 20 But see *Bautista v. Los Angeles County*, 216 F.3d 837,
841 (9th Cir. 2000) (listing the same but 21 noting the court need not make explicit findings as to
each); *Ferdik v. Bonzelet*, 963 F.2d 1258, 22 1260-61 (9th Cir. 1992) (affirming dismissal of pro se
§ 1983 action when plaintiff did not 23 amend caption to remove “et al.” as the court directed and
reiterating that an explicit finding of 24 each factor is not required by the district court). 25 Upon
review of the above-stated factors, the Court finds dismissal of the action is 26 warranted. The
expeditious resolution of litigation is deemed to be in the public interest. 27 *Yourish v. California*
Amplifier, 191 F.3d 983, 990-91 (9th Cir. 1999). Turning to the second 1 has failed to respond to
the district judge’s January 6, 2025 order, the Court’s time is better spent 2 on other matters than
needlessly consumed managing a case with a recalcitrant litigant. Indeed, 3 “trial courts do not
have time to waste on multiple failures by aspiring litigants to follow the 4 rules and requirements
of our courts.” *Pagtalunan v. Galaza*, 291 F.3d 639, 644 (9th Cir. 2002) 5 (Trott, J., concurring in
affirmance of district court’s involuntary dismissal with prejudice of 6 habeas petition where the
petitioner failed to timely respond to court order, noting “the weight of 7 the docket-managing
factor depends upon the size and load of the docket, and those in the best 8 position to know what
that is are our beleaguered trial judges”). Delays have the inevitable and 9 inherent risk that
evidence will become stale or witnesses’ memories will fade or be unavailable 10 and can
prejudice a defendant, thereby satisfying the third factor. See *Sibron v. New York*, 392 11 U.S. 40,
57 (1968). Regarding the fifth factor, the Court has considered the availability of less 12 drastic
sanctions but finds that its recommendation of dismissal with prejudice is proper because 13 the
district court explicitly warned Plaintiff of the consequences for failure to file a timely 14 amended
complaint. 15 In sum, this case cannot linger indefinitely on this Court’s already overburdened

docket. 16 A dismissal of this action for failure to prosecute and failure to comply with court orders is in 17 accord with Ninth Circuit precedent as well precedent governing Rule 41 dismissals. It appears 18 Plaintiff has abandoned this action, and Plaintiff's failure to respond to the district judge's order 19 warrants the sanction of dismissal with prejudice under the circumstances. 20 II.

21 ORDER AND RECOMMENDATIONS

22 Accordingly, it HEREBY RECOMMENDED that this case be dismissed with prejudice 23 for failure to prosecute this action and/or comply with the Court's order under Fed. R. Civ. P. 41 24 and Local Rule 110. 25 These Findings and Recommendations will be submitted to the United States District 26 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen 27 (14) days after being served with these Findings and Recommendations, Plaintiff may file 1 | document should be captioned "Objections to Magistrate Judge's Findings and 2 | Recommendations." Plaintiff is advised that failure to file objections within the specified time 3 | may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th 4 | Cir. 2014), citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991). 5

6 IT IS SO ORDERED. FA. ee

7 | Dated: _ March 4, 2025

STANLEY A. BOONE

8 United States Magistrate Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28