

**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

OPINION

Dias v. Avila

PER CURIAM.

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UNITED STATES DISTRICT COURT

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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 involuntarily 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)(1). 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