

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

John Paul Frank Schowachert v. Kelley Santoro, et al.

Schowachert v. Santoro · No. No. 1:21-cv-01168 KES GSA (PC) · Decided September 15, 2025

OPINION

Santoro

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 JOHN PAUL FRANK SCHOWACHERT, No. 1:21-cv-01168 KES GSA (PC)

12 Plaintiff, ORDER ADOPTING FINDINGS AND

RECOMMENDATIONS

13 v. Doc. 14 14 KELLEY SANTORO, et al., 15 Defendants. 16 17 Plaintiff John Paul Frank Schowachert is a state prisoner proceeding pro se and in forma 18 pauperis in this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United 19 States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On May 19, 2025, the assigned magistrate judge screened plaintiff’s complaint, found it 21 failed to state any cognizable claim, and directed plaintiff to take one of the following options 22 within thirty days: (1) file a first amended complaint, (2) file a notice of his intent to stand on the 23 complaint, or (3) voluntarily dismiss this action pursuant to Federal Rule of Civil Procedure 41.

24 Doc. 12. The screening order was served on plaintiff and notified him that “[f]ailure to comply 25 with this order shall result in a recommendation that this action be dismissed.” Id. at 9. More 26 than thirty days have elapsed, and plaintiff has not taken any of the three options presented in the 27 screening order, nor has he requested an extension of time within which to do so. See docket. 28 /// 1 Thereafter, on July 24, 2025, the magistrate judge issued findings and recommendations, 2 recommending that this action be dismissed for failure to prosecute. Doc. 14. Specifically, the 3 magistrate judge found that the relevant factors—that is, the public’s interest in expeditious 4 resolution of litigation; the court’s need to manage its docket; the risk of prejudice to the 5 defendants; the public policy favoring disposition of cases on their merits; and the availability of 6 less drastic sanctions—weigh in favor of dismissing the case without prejudice as a sanction for 7 plaintiff’s failure to prosecute. Id. at 2–4 (applying *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 8 133 (9th Cir. 1987) (failure to comply with a court order)); see also *Henderson v. Duncan*, 779 9 F.2d 1421, 1423 (9th Cir. 1986) (failure to prosecute). The findings and

recommendations were 10 served on plaintiff and contained notice that any objections thereto were to be filed within 11 fourteen days after service. Doc. 14 at 5. Plaintiff has not filed objections to the findings and 12 recommendations, and the time to do so has passed. See docket. 13 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has conducted a de 14 novo review of this case. Having carefully reviewed the file, the Court finds that the conclusion 15 that plaintiff's failure to prosecute warrants dismissal of this action is supported by the record. 16 Dismissal is also warranted due to plaintiff's failure to comply with the May 19, 2025 screening 17 order. 18 As the findings and recommendations correctly note, the first two factors weigh in favor 19 of dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) ("The public's 20 interest in expeditious resolution of litigation always favors dismissal."); *Ferdik v. Bonzelet*, 963 21 F.2d 1258, 1261 (9th Cir. 1992) (district courts have inherent authority to manage their dockets 22 without being subject to noncompliant litigants). The public's interest in expeditious resolution 23 of litigation and the Court's need to manage its docket weigh in favor of dismissal because the 24 Court cannot effectively manage its docket, nor can the litigation be expeditiously resolved, as 25 plaintiff failed to obey the May 19, 2025 screening order directing him to (1) file a first amended 26 complaint, (2) file a notice of his intent to stand on the complaint, or (3) voluntarily dismiss this 27 action pursuant to Federal Rule of Civil Procedure 41. 28 /// 1 As to the third factor, the risk of prejudice to the defendant also weighs in favor of 2 | dismissal, given that unreasonable delay in a case gives rise to a presumption of injury to the 3 | defendant. See, e.g., *Anderson v. Air W., Inc.*, 542 F.2d 522, 524 (9th Cir. 1976). While the 4 | fourth consideration, that public policy favors disposition of cases on their merits, generally 5 | weighs against dismissal, here it lends little support "to a party whose responsibility it is to move 6 | a case toward disposition on the merits but whose conduct impedes progress in that direction." In 7 | re Phenylpropanolamine (PPA) Products Liab. Litig., 460 F.3d 1217, 1228 (9th Cir. 2006) 8 | (citations omitted). 9 Finally, the Court's warning to plaintiff that his failure to comply with the screening order 10 || would result in the dismissal of this action satisfies the "consideration of alternatives" 11 | requirement. *Ferdik*, 963 F.2d at 1262. Plaintiff's failure to comply with the screening order 12 || prevents prosecution and disposition of this action on its merits. 13 Accordingly: 14 1. The findings and recommendation issued on July 24, 2025, Doc. 14, are adopted; 15 2. This action is dismissed without prejudice for failure to obey a court order and 16 failure to prosecute; and 17 3. The Clerk of the Court is directed to close this case. 18 19

29 | IT IS SO ORDERED. _

21 Dated: _ September 12, 2025 4A .

0 UNITED STATES DISTRICT JUDGE

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