

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Benjamin Karl Ray Bunton v. Keith Smith, et al.

Bunton · No. 1:23-cv-00211-JLT-SAB · Decided November 4, 2025

SUMMARY

The document contains findings and recommendations by a United States magistrate judge recommending dismissal with prejudice of Benjamin Karl Ray Bunton’s civil rights action for failure to prosecute and failure to comply with court orders. The court also vacated the scheduled November 12, 2025 hearing and advised that objections were due within fourteen days.

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	November 4, 2025
DOCKET	1:23-cv-00211-JLT-SAB
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 41(b) to dismiss the pro se plaintiff's civil-rights action with prejudice for failure to prosecute and failure to comply with court orders. A magistrate judge issued findings and recommendations recommending dismissal and vacated the scheduled hearing.
STANDARD OF REVIEW	Dismissal for failure to prosecute or failure to obey a court order is evaluated under the five-factor test addressing the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to defendants, the public policy favoring decisions on the merits, and the availability of less drastic sanctions. The factors guide the court's exercise of discretion and are not mandatory conditions that must all be satisfied.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Keith Smith, et al.

TOPICS

motions to dismiss

sanctions

civil procedure

civil rights

PRACTICE AREAS

civil procedure

civil rights

prisoner civil rights

QUESTIONS PRESENTED

1. Whether the action should be dismissed with prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute.
2. Whether Plaintiff's repeated failure to comply with court orders justified dismissal after consideration of the Ninth Circuit's five dismissal factors.
3. Whether the court had adequately considered lesser sanctions before recommending dismissal.

HOLDINGS

1. Dismissal with prejudice under Federal Rule of Civil Procedure 41(b) was warranted because Plaintiff failed to prosecute the action, failed to comply with multiple court orders, failed to participate in discovery, and failed to respond to the motion to dismiss and final order to show cause.
2. The warning that failure to comply with the final order to show cause would result in a recommendation of dismissal with prejudice satisfied the requirement that the court consider less drastic sanctions.

KEY QUOTATIONS

“In determining whether to dismiss an action for lack of prosecution, the district court is required to consider several factors: ‘(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.’” (at 3)

“Thus, Plaintiff had adequate warning that dismissal of this action would result from noncompliance with the Court’s order.” (at 5)

FACTUAL BACKGROUND

Plaintiff, proceeding pro se and in forma pauperis, filed a civil-rights action and was subject to a discovery schedule. Although the discovery deadline was extended to August 30, 2025, Plaintiff did not make arrangements to complete his deposition or those of his witnesses, did not provide witness contact information, and failed to respond to two orders to show cause. Plaintiff also did not oppose Defendants' motion to dismiss or the final order to show cause, despite being warned that continued noncompliance could result in dismissal with prejudice.

PROCEDURAL HISTORY

Plaintiff filed the civil-rights action on February 13, 2023. After discovery deadlines were extended, Plaintiff failed to arrange or complete his deposition and the depositions of his witnesses, failed to respond to an order to show cause, and failed to oppose Defendants' motion to dismiss. The magistrate judge issued a final order to

show cause, which Plaintiff also ignored, and recommended dismissal with prejudice under Rule 41(b), subject to review by the assigned district judge after the objection period.

DISPOSITION

other

CASES CITED

- Bautista v. Los Angeles Cty., 216 F.3d 837, 841 (9th Cir. 2000)
- Ready Transp., Inc. v. AAR Mfg., Inc., 627 F.3d 402, 404 (9th Cir. 2010)
- Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
- Malone v. United States Postal Serv., 833 F.2d 128, 130-33 (9th Cir. 1987)
- Henderson v. Duncan, 779 F.2d 1421, 1423-24 (9th Cir. 1986)
- In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006)
- Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)
- Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)
- Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002)
- In re Eisen, 31 F.3d 1447, 1452-53 (9th Cir. 1994)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)