

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Foust v. California Medical Facility

Foust · No. 2:21-CV-0540-DJC-DMC-P · Decided March 18, 2025

SUMMARY

The document contains findings and recommendations in a prisoner civil rights action under 42 U.S.C. § 1983. The magistrate judge recommends dismissal without prejudice for lack of prosecution and failure to comply with an order directing the plaintiff to file a fourth amended complaint.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dennis M. Cota
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 18, 2025
DOCKET	2:21-CV-0540-DJC-DMC-P
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations in a prisoner civil-rights action recommending dismissal without prejudice for failure to prosecute and failure to comply with court rules and orders.
STANDARD OF REVIEW	Dismissal as a sanction for failure to prosecute or failure to comply with court orders is evaluated under five factors: the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to opposing parties, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Carl Foust v. California Medical Facility, Aqualian, Kahlon

TOPICS

- sanctions
- civil procedure
- prisoners rights
- civil rights

PRACTICE AREAS

- civil procedure
- prisoner civil rights
- sanctions

QUESTIONS PRESENTED

- 1. Whether the action should be dismissed without prejudice for failure to prosecute and failure to comply with court rules and the court's order to file a fourth amended complaint.

HOLDINGS

- 1. Dismissal without prejudice was appropriate because Plaintiff failed to file the ordered fourth amended complaint after receiving a warning that noncompliance could result in dismissal.

KEY QUOTATIONS

“Those factors are: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” (at 2)

FACTUAL BACKGROUND

Plaintiff is a prisoner proceeding pro se in a civil-rights action under 42 U.S.C. § 1983. The court ordered him to file a fourth amended complaint within 30 days and warned that failure to comply could result in dismissal. Plaintiff did not file the required amended complaint.

PROCEDURAL HISTORY

Plaintiff, proceeding pro se, brought an action under 42 U.S.C. § 1983. After the court directed him on January 21, 2025, to file a fourth amended complaint within 30 days and warned that noncompliance could result in dismissal, Plaintiff did not file the amended complaint. The magistrate judge recommended dismissal without prejudice, subject to objections and review by the assigned district judge.

DISPOSITION

other

CASES CITED

- Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000)
- Malone v. U.S. Postal Service, 833 F.2d 128, 130, 132-33 & n.1 (9th Cir. 1987)
- Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam)
- Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN
DISTRICT OF CALIFORNIA 10 11 CARL FOUST, No. 2:21-CV-0540-DJC-DMC-P 12 Plaintiff,
13 v. FINDINGS AND RECOMMENDATIONS 14 CALIFORNIA MEDICAL FACILITY, et al.,1

15 Defendants. 16 17 18 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 19 42 U.S.C. § 1983. 20 On January 21, 2025, the Court directed Plaintiff to file a fourth amended 21 complaint within 30 days.

Plaintiff was warned that failure to file an amended complaint may 22 result in dismissal of this action for lack of prosecution and failure to comply with court rules and 23 orders. See Local Rule 110. To date, Plaintiff has not complied. 24 / / / 25 / / / 26 / / / 27 1 Pursuant to the Court's recent orders, this action proceeds against Defendants Aqualian and 28 Kahlon.

See ECF Nos. 105 and 106.] The Court must weigh five factors before imposing the harsh sanction of dismissal. 2 || See *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000); *Malone v. U.S. Postal 3 || Service*, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in 4 | expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of 5 || prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits; 6 || and (5) the availability of less drastic sanctions.

See *id.*; see also *Ghazali v. Moran*, 46 F.3d 52, 7 || 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate 8 || sanction is considered a less drastic alternative sufficient to satisfy the last factor. See *Malone*, 9 | 833 F.2d at 132-33 &n.1.

The sanction of dismissal for lack of prosecution is appropriate where 10 || there has been unreasonable delay. See *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 11 || 1986). Dismissal has also been held to be an appropriate sanction for failure to comply with an 12 || order to file an amended complaint. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.

13 | 1992). 14 Having considered these factors, and in light of Plaintiffs failure to file an 15 || amended complaint as directed, the Court finds that dismissal of this action is appropriate. 16 Based on the foregoing, the undersigned recommends that this action be dismissed, 17 || without prejudice, for lack of prosecution and failure to comply with court rules and orders.

18 These findings and recommendations are submitted to the United States District 19 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(I). Within 14 days 20 | after being served with these findings and recommendations, any party may file written 21 || objections with the court. Responses to objections shall be filed within 14 days after service of 22 || objections.

Failure to file objections within the specified time may waive the right to appeal. See 23 || *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). 24 25 | Dated: March 17, 2025 Co 26 DENNIS M. COTA 07 UNITED STATES MAGISTRATE JUDGE 28