

**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.

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., 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 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