

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

James v. Fadika

James · No. 2:24-CV-1773-DAD-DMC-P · Decided June 12, 2025

OPINION

(PC) James v. Fadika

PER CURIAM.

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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 RONALD EUGENE JAMES, No. 2:24-CV-1773-DAD-DMC-P

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 NICOLOFAR FADIKA,

15 Defendant. 16

17 Plaintiff, who is proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. §
18 1983. 19 On July 8, 2024, the Court determined that Plaintiff's complaint was appropriate 20 for
21 service of Defendant Fadika. See ECF No. 5. Plaintiff submitted the paperwork necessary for 22
23 service by the United States Marshal and, on August 28, 2024, the Court directed service. See 24
25 ECF No. 12. On January 15, 2025, summons was returned by the United States Marshal as 26
27 unexecuted because Defendant Fadika could not be located or identified given the information 28
29 provided by Plaintiff. See ECF No. 16. On January 23, 2025, the Court directed Plaintiff to 30
31 provide additional information as to Defendant Fadika to enable the United States Marshal to 32
33 effect service of process. See ECF No. 17. Plaintiff was directed to comply within 60 days of the 34
35 date of the January 23, 2025, order. See id. Plaintiff was cautioned that failure to comply could 36
37 result in dismissal of the action under Federal Rule of Civil Procedure 4(m) for lack of timely 38
39 service of process. See id. To date, Plaintiff has not complied with the January 23, 2025, order 40
41 and Defendant Fadika remains unserved. 42 The Court must weigh five factors before imposing the
43 harsh sanction of dismissal. 44 See *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir.
45 2000); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1)
46 the public's interest in 47 expeditious resolution of litigation; (2) the court's need to manage its own
48 docket; (3) the risk of 49 prejudice to opposing parties; (4) the public policy favoring disposition of
50 cases on their merits; 51 and (5) the availability of less drastic sanctions. See id.; see also *Ghazali v.*
52 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed

as an appropriate 10 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone, 11 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where 12 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 13 1986). 14 Having considered these factors, and in light of Plaintiff's failure to provide the 15 Court with information necessary to effect service of process on Defendant Fadika as ordered, the 16 Court finds that dismissal of this action is appropriate. 17 /// 18 /// 19 /// 20 /// 21 /// 22 /// 23 /// 24 /// 25 /// 26 /// 27 /// 28 ///] Based on the foregoing, the undersigned recommends as follows: 2 1. This action be dismissed, without prejudice, for lack of prosecution and 3 || failure to comply with court rules and orders. 4 2. Plaintiffs motion for release of medical records, ECF No. 15, be denied as 5 |} moot. 6 These findings and recommendations are submitted to the United States District 7 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 8 | after being served with these findings and recommendations, any party may file written 9 || objections with the court. Responses to objections shall be filed within 14 days after service of 10 || objections. Failure to file objections within the specified time may waive the right to appeal. See 11 | Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 12 13 | Dated: June 12, 2025 Ss..c0_,
M4 DENNIS M. COTA
15 UNITED STATES MAGISTRATE JUDGE
16 17 18 19 20 21 22 23 24 25 26 27 28