

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

Miguel Hernandez v. Steve Porretta, et al.

Hernandez v. Porretta · No. SA CV 25-00407-DFM · Decided July 14, 2025

SUMMARY

The United States District Court for the Central District of California dismissed the action without prejudice for failure to prosecute and failure to comply with a court order. The court concluded that the relevant factors favored dismissal after Plaintiff failed to properly respond to an order to show cause or pursue default-related remedies.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Central District of California                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Douglas F. McCormick                                                                                                                                                                                                                                                                                                                                                    |
| JURISDICTION          | United States District Court for the Central District of California                                                                                                                                                                                                                                                                                                     |
| DECIDED               | July 14, 2025                                                                                                                                                                                                                                                                                                                                                           |
| DOCKET                | SA CV 25-00407-DFM                                                                                                                                                                                                                                                                                                                                                      |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | The district court dismissed the action without prejudice on its own motion for failure to prosecute and failure to comply with a court order.                                                                                                                                                                                                                          |
| STANDARD OF REVIEW    | The court applied the discretionary five-factor test governing dismissal for failure to prosecute or failure to comply with a court order, weighing the public interest in expeditious resolution, the court's need to manage its docket, prejudice to defendants, availability of less drastic alternatives, and the public policy favoring disposition on the merits. |
| PRECEDENTIAL VALUE    | unpublished                                                                                                                                                                                                                                                                                                                                                             |
| PARTIES               | Miguel Hernandez v. Steve Porretta, Donna L. Kaeser, Doe<br>Defendants 1-10                                                                                                                                                                                                                                                                                             |

TOPICS

- sanctions
- default judgment
- default
- civil procedure

## PRACTICE AREAS

civil procedure

federal litigation

## QUESTIONS PRESENTED

1. Whether the action should be dismissed for failure to prosecute and failure to comply with the court's order to show cause.
2. Whether the relevant five-factor dismissal analysis favored dismissal without prejudice.

## HOLDINGS

1. A district court may exercise its inherent docket-control authority to impose sanctions, including dismissal, when a plaintiff fails to prosecute the action or comply with a court order.
2. Dismissal without prejudice was warranted because the Pagtalunan factors, considered together, favored dismissal.

## KEY QUOTATIONS

*“District courts “have inherent power to control their dockets and may impose sanctions, including dismissal, in the exercise of that discretion.”” (958 F.2d at 273)*

*“When determining “whether to dismiss a claim for failure to prosecute or failure to comply with a court order, the Court must weigh the following 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 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.”” (291 F.3d at 642)*

*“On balance, the Court finds the relevant factors weigh in favor of dismissal. This case is therefore DISMISSED WITHOUT PREJUDICE for failure to prosecute and comply with a Court order.” (Order's Discussion section)*

## FACTUAL BACKGROUND

Plaintiff, represented by counsel, filed an action against Steve Porretta, Donna L. Kaeser, and Doe defendants and personally served Porretta and Kaeser. Although Defendants did not timely answer, Plaintiff repeatedly filed notices or requests that were subsequently identified as erroneous and did not pursue default judgment or otherwise advance the case. Plaintiff also failed to appropriately respond to the court's order to show cause requiring him to take specified steps to prosecute the action.

## PROCEDURAL HISTORY

Plaintiff filed a complaint on March 3, 2025, and served Defendants Steve Porretta and Donna L. Kaeser. After Defendants did not timely answer, Plaintiff made and then attempted to retract requests for entry of default. The court issued an order to show cause directing Plaintiff to seek default or default judgment, voluntarily dismiss the case, or otherwise cause an answer or other filing to be made. Plaintiff again filed and retracted a request for

entry of default and took no other action before the response deadline expired. The court dismissed the case without prejudice.

#### DISPOSITION

dismissed

#### CASES CITED

- Oliva v. Sullivan, 958 F.2d 272, 273 (9th Cir.)
- Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir.)
- Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir.)
- In re Eisen, 31 F.3d 1447, 1452 (9th Cir.)
- Ewing v. Ruano, No. 09-8471, 2012 WL 2138159, at \*2 (C.D. Cal. June 12, 2012)
- Morris v. Morgan Stanley & Co., 942 F.2d 648, 652 (9th Cir.)
- Yong Koo v. Portillo, No. 19-6318, 2020 WL 10313717, at \*1 (C.D. Cal. Jan. 21, 2020)
- Kyu Hwa Back v. Jose Gonzalez, No. 19-8974, 2020 WL 4018813, at \*2 (C.D. Cal. Feb. 18, 2020)

#### OPINION

Miguel Hernandez v. Steve Porretta

PER CURIAM.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

MIGUEL HERNANDEZ, Case No. SA CV 25-00407-DFM

Plaintiff, Order Dismissing Case for Failure to Prosecute and Comply with Court v. Order STEVE PORRETTA, et al., Defendants. On March 3, 2025, Plaintiff Miguel Hernandez (“Plaintiff”), who is represented by counsel, filed a Complaint against Defendants Steve Porretta (“Porretta”), Donna L. Kaeser (“Kaeser”), and unnamed Doe Defendants 1-

10. See Dkt. 1. On April 10, 2025, Plaintiff filed Proofs of Service, indicating that Kaeser and Porretta were personally served on March 23 and March 27, 2025. See Dkts. 7, 8. Answers were thus due by April 14 and 17, 2025. See Fed. R. Civ. P. 12(1)(A)(i). On April 17, 2025, Kaeser filed a stipulation extending her time to file an Answer to May 14, 2025. See Dkt. 11. On April 18, 2025, Plaintiff requested an entry of default against Kaeser and Porretta. See Dkts. 13, 15. That same day, however, Plaintiff filed a Notice of Errata stating his request for the Clerk of this Court to enter default against Kaeser was inadvertently filed and should be disregarded. See Dkt. 14. The Clerk thus entered default against Porretta on April 23, 2025, but did not enter default against Kaeser. See Dkts. 16, 17. When by May 22, 2025, neither Kaeser nor Porretta had filed an Answer or otherwise responded to the Complaint, and Plaintiff had not

requested entry of default against Kaeser or filed a motion for default judgment against Porretta, the Court ordered Plaintiff to show cause why this action should not be dismissed for failure to prosecute. See Dkt. 19 (“OSC”). The Court instructed Plaintiff to do one of the following to discharge the OSC: (1) seek entry of default and/or default judgment; (2) file a notice of voluntary dismissal under Fed. R. Civ. P. 41; or (3) cause by some means an Answer or other filing to be made by Defendant. See *id.* On June 12, 2025, Plaintiff filed a request for the Clerk to enter default against Porretta. See Dkt. 20. That same day, Plaintiff filed a Notice of Errata stating the request for entry of default against Porretta was mistakenly filed. See Dkt. 21. Plaintiff has not taken any other action in this case, and the time to respond to the Court’s OSC has expired. See Dkt. 19 (requiring response within twenty-one (21) days).

## DISCUSSION

District courts “have inherent power to control their dockets and may impose sanctions, including dismissal, in the exercise of that discretion.” *Oliva v. Sullivan*, 958 F.2d 272, 273 (9th Cir. 1992). When determining “whether to dismiss a claim for failure to prosecute or failure to comply with a court order, the Court must weigh the following 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 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). Having considered the *Pagtalunan* factors, the Court is persuaded that this action should be dismissed for failure to comply with a court order and failure to prosecute. Plaintiff’s failure to seek entry of default and default judgment or take any other action hinders the Court’s ability to move this case toward disposition and indicates that Plaintiff does not intend to litigate this action. With regard to the first factor, “[t]he public’s interest in expeditious resolution of litigation always favors dismissal.” *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999). The second factor also favors dismissal because “it is incumbent upon the Court to manage its docket without being subject to routine noncompliance of litigants.” *Pagtalunan*, 291 F.3d at 642. In other words, Plaintiff’s “noncompliance has caused [this] action to come to a complete halt, thereby allowing [him] to control the pace of the docket rather than the Court.” *Yourish*, 191 F.3d at 990 (internal quotation marks omitted). As to the third factor, an unreasonable delay creates a presumption of prejudice. See *In re Eisen*, 31 F.3d 1447, 1452 (9th Cir. 1994). With regard to the fourth factor, the Court notes it has attempted less drastic alternatives to no avail. The Court issued an OSC why this case should not be dismissed for failure to prosecute. See Dkt. 19. Plaintiff did not appropriately respond to the OSC. Thus, it does not appear to the Court that less drastic sanctions are available. Finally, as to the fifth factor, public policy favoring disposition on the merits generally weighs against dismissal, but “it logically rests upon an inherent presumption a litigant . . . has manifested a diligent desire to prosecute his or her claims.” *Ewing v. Ruano*, No. 09-8471, 2012 WL 2138159, at \*2 (C.D. Cal. June 12, 2012). Indeed, it is a plaintiff’s responsibility to move a case toward a

merits disposition. See *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991). Plaintiff's failure to timely prosecute this case, including his failure to seek default, file a motion for default judgment, or take other action after Defendants failed to file timely responses to the Complaint, decreases the weight of the public policy favoring disposition on the merits. See *Yong Koo v. Portillo*, No. 19-6318, 2020 WL 10313717, at \*1 (C.D. Cal. Jan. 21, 2020) (dismissing action with prejudice for lack of prosecution and failure to comply with court orders when the plaintiff failed to file a motion for default judgment by court's deadline); *Kyu Hwa Back v. Jose Gonzalez*, No. 19-8974, 2020 WL 4018813, at \*2 (C.D. Cal. Feb. 18, 2020) (dismissing case without prejudice for same). The Court finds, therefore, that this factor is neutral and does not preclude dismissal.

## II. CONCLUSION

On balance, the Court finds the relevant factors weigh in favor of dismissal. This case is therefore **DISMISSED WITHOUT PREJUDICE** for failure to prosecute and comply with a Court order.

Date: July 14, 2025 4, ¢ é d 1D

DOUGLAS F. McCORMICK

United States Magistrate Judge