

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

Clark v. Cleveland

Clark · No. 2:21-CV-1975-TLN-DMC-P · Decided March 18, 2025

OPINION

1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN
DISTRICT OF CALIFORNIA 10 11 ANDRE JAMES CLARK, SR., No. 2:21-CV-1975-TLN-
DMC-P 12 Plaintiff, 13 v. FINDINGS AND RECOMMENDATIONS 14 CLEVELAND, 15
Defendant. 16 17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. 19 On January 28, 2025, the Court determined that Plaintiff's complaint was
20 appropriate for service and directed Plaintiff to submit documents for service by the United
States 21 Marshal within 30 days.

Plaintiff was warned that failure to submit the required documents 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 The Court must weigh five factors before
imposing the harsh sanction of dismissal. 25 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 27 expeditious resolution of litigation; (2) the court's need to manage its
own docket; (3) the risk of 28 prejudice to opposing parties; (4) the public policy favoring
disposition of cases on their merits; 1 | and (5) the availability of less drastic sanctions.

See *id.*; see also *Ghazali v. Moran*, 46 F.3d 52, 2 | 53 (th Cir. 1995) (per curiam). A warning that
the action may be dismissed as an appropriate 3 || sanction is considered a less drastic alternative
sufficient to satisfy the last factor. See *Malone*, 4 | 833 F.2d at 132-33 & n.1.

The sanction of dismissal for lack of prosecution is appropriate where 5 || there has been
unreasonable delay. See *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 6 || 1986). Dismissal
has also been held to be an appropriate sanction for failure to comply with an 7 || order to file an
amended complaint. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.

8 | 1992). 9 Having considered these factors, and in light of Plaintiffs failure to submit service 10 ||
documents as directed, the Court finds that dismissal of this action is appropriate. 11 Based on the
foregoing, the undersigned recommends that this action be dismissed, 12 || without prejudice, for
lack of prosecution and failure to comply with court rules and orders.

13 These findings and recommendations are submitted to the United States District 14 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 15 || after being served with these findings and recommendations, any party may file written 16 || objections with the court. Responses to objections shall be filed within 14 days after service of 17 || objections.

Failure to file objections within the specified time may waive the right to appeal. See 18 | Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 19 20 | Dated: March 17, 2025 Co 21 DENNIS M. COTA 02 UNITED STATES MAGISTRATE JUDGE 23 24 25 26 27 28