

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

**Mac Garcia-Garcia v. J. Doer, et al.**

Garcia-Garcia v. Doer · No. 1:24-cv-01559 KES GSA (PC) · Decided September 15, 2025

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**SUMMARY**

The United States District Court for the Eastern District of California adopted the magistrate judge's findings and recommendations in this Bivens civil rights action. The court dismissed the action without prejudice for failure to obey court orders, failure to prosecute, and failure to comply with Local Rule 183(b), and denied the plaintiff's application to proceed in forma pauperis. The Clerk was directed to close the case.

**OPINION**

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF  
CALIFORNIA 10 11 MAC GARCIA-GARCIA, No. 1:24-cv-01559 KES GSA (PC) 12 Plaintiff,  
ORDER ADOPTING FINDINGS AND RECOMMENDATIONS 13 v. Docs. 2, 7 14 J. DOER, et  
al., 15 Defendants. 16 17 Plaintiff Mac Garcia-Garcia has filed this civil rights action seeking  
relief under Bivens v. 18 Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S.  
388 (1971).

Doc. 1. On 19 December 18, 2024, plaintiff filed an application to proceed in forma pauperis.  
Doc. 2. The 20 matter was referred to a United States magistrate judge pursuant to 28 U.S.C. §  
636(b)(1)(B) and 21 Local Rule 302. 22 On December 20, 2024, the assigned magistrate judge  
directed plaintiff to submit a 23 certified copy of his inmate trust account statement for the six-  
month period immediately 24 preceding the filing of the complaint, within thirty days.

Doc. 4. Plaintiff did not comply with 25 that order. Thereafter, on March 12, 2025, the magistrate  
judge issued an order to show case 26 ("OSC") why this action should not be dismissed for  
plaintiff's failure to obey a court order. 27 Doc. 5.

As an alternative to filing a response to the OSC, plaintiff was permitted to file a copy of 28 his  
six-month prison trust fund account statement or pay the filing fee in full within 21 days. Id. 1 at  
2–3. The OSC was returned "as Undeliverable, RTS" on April 10, 2025. See docket. Plaintiff 2 did  
not respond to or otherwise comply with the OSC.1 3 On June 25, 2025, the magistrate judge  
issued findings and recommendations 4 recommending that this action be dismissed without  
prejudice due to plaintiff's failure to obey 5 court orders and failure to prosecute, and that  
plaintiff's application to proceed in forma pauperis 6 be denied.

Doc. 7. Specifically, the magistrate judge found that the relevant factors—that is, the 7 public’s interest in expeditious resolution of litigation; the court’s need to manage its docket; the 8 risk of prejudice to the defendants; the public policy favoring disposition of cases on their merits; 9 and the availability of less drastic sanctions—weigh in favor of dismissing the case without 10 prejudice as a sanction for plaintiff’s failure to obey court orders, failure to prosecute, and failure 11 to comply with the local rules.

Id. at 3–5 (applying *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 133 (9th Cir. 1987) (failure to comply with a court order)); see also *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986) (failure to prosecute); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (failure to prosecute based on noncompliance with local rule).

The findings and 15 recommendations were served on plaintiff and contained notice that any objections thereto were 16 to be filed within fourteen days after service. Doc. 7 at 5–6. Plaintiff has not filed objections to 17 the findings and recommendations, and the time to do so has passed. 18 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has conducted a de 19 novo review of this case.

Having carefully reviewed the file, the Court finds that the conclusions 20 that plaintiff’s application to proceed in forma pauperis should be denied and that the relevant 21 factors support dismissal of this case without prejudice for failure to obey court orders, failure to 22 prosecute, and failure to comply with Local Rule 183(b), are supported by the record.

23 /// 24 1 Though the OSC was returned as undeliverable, it was properly served on plaintiff, who has yet 25 to file a notice of change of address. See L.R. 182(f) (absent notice of a pro se party’s change of address, service of documents at the prior address of record is fully effective); L.R. 183(b) (“If 26 mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, 27 and if such plaintiff fails to notify the Court and opposing parties within thirty (30) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to 28 prosecute.”).

1 As the findings and recommendations correctly note, the first two factors weigh in favor 2 of dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (“The public’s 3 interest in expeditious resolution of litigation always favors dismissal.”).

The public’s interest in 4 expeditious resolution of litigation and the Court’s need to manage its docket weigh in favor of 5 dismissal because the Court cannot effectively manage its docket, nor can the litigation be 6 expeditiously resolved, as plaintiff failed to submit an account statement as ordered, failed to 7 comply with the OSC, and failed to keep the Court apprised of his current address.

See Carey, 8 856 F.2d at 1441 (“A party, not the district court, bears the burden of keeping the court apprised 9 of any changes in his mailing address.”). 10 As to the third factor, the risk of prejudice to the defendant also weighs in favor of 11 dismissal, given that unreasonable delay in a case gives rise to a presumption of injury to the 12 defendant. See, e.g., *Anderson v. Air W., Inc.*, 542 F.2d 522, 524 (9th Cir.

1976); see also Carey, 13 856 F.2d at 1440, 1441 (rejecting argument that an approximately two-month delay was not 14 unreasonable where plaintiff failed to keep court apprised of current address). While the fourth 15 consideration, that public policy favors disposition of cases on their merits, generally weighs 16 against dismissal, here it lends little support “to a party whose responsibility it is to move a case 17 toward disposition on the merits but whose conduct impedes progress in that direction.” In re 18 Phenylpropanolamine (PPA) Products Liab.

Litig., 460 F.3d 1217, 1228 (9th Cir. 2006) (citations 19 omitted). 20 Finally, there is little else available to the Court that would constitute a satisfactory lesser 21 sanction given the Court’s apparent inability to communicate with plaintiff. See, e.g., *Gaston v. 22 Marean*, 2020 WL 4059200, at \*3 (E.D. Cal. July 20, 2020) (“[G]iven the Court’s apparent 23 inability to communicate with Plaintiff, there are no other reasonable alternatives available to 24 address Plaintiff’s failure to prosecute this action.”).

Plaintiff has not submitted an inmate 25 account statement or paid the filing fee as ordered. He has also failed to update his current 26 address. Therefore, this matter cannot be prosecuted, nor can it be disposed of on its merits. 27 /// 28 /// 1 Accordingly: 2 1.

The findings and recommendation issued on June 25, 2025, Doc. 7, are adopted; 3 2. This action is dismissed without prejudice for failure to obey court orders, failure 4 to prosecute, and failure to comply with Local Rule 183(b); 5 3. Plaintiff’s application to proceed in forma pauperis, Doc. 2, is denied; and 6 4.

The Clerk of the Court is directed to close this case. 7 8 g | SO ORDERED. \_ 10 Dated: \_ September 14, 2025 4h UNITED STATES DISTRICT JUDGE 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28