

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Whitsitt v. Domus Management Co.

No. 2:24-cv-0407-DC-JDP (PS) (E.D. Cal. Apr. 22, 2025) · No. 2:24-cv-0407-DC-JDP (PS) · Decided April 23, 2025

SUMMARY

A magistrate judge recommends dismissing William J. Whitsitt’s action against Domus Management Co. without prejudice. The recommendation is based on plaintiff’s failure to prosecute, failure to comply with an order requiring an amended complaint or notice of voluntary dismissal, and failure to state a claim. The parties may file objections within fourteen days of service.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 23, 2025
DOCKET	2:24-cv-0407-DC-JDP (PS)
DISPOSITION	other
PROCEDURAL POSTURE	A magistrate judge issued findings and recommendations recommending dismissal without prejudice after plaintiff failed to comply with an order requiring him to file an amended complaint or a notice of voluntary dismissal.
PRECEDENTIAL VALUE	unpublished, nonprecedential findings and recommendations

TOPICS

sanctions civil procedure pleadings

PRACTICE AREAS

civil procedure federal courts

QUESTIONS PRESENTED

- Whether the action should be dismissed without prejudice because plaintiff failed to prosecute, failed to comply with a court order, and failed to state a claim.

2. Whether the factors governing dismissal for failure to comply with court orders and failure to prosecute support dismissal in these circumstances.

HOLDINGS

1. A court may dismiss an action as a sanction for failure to prosecute, failure to obey a court order, or failure to comply with local rules, pursuant to its inherent power to control its docket.
2. The balance of the five dismissal factors favored dismissal because plaintiff failed to comply with the order, implicating the public interest in expeditious resolution, the court's need to manage its docket, and prejudice to defendants, while the prior warning satisfied consideration of less drastic alternatives.

KEY QUOTATIONS

“I therefore find that the balance of factors weighs in favor of dismissal.” (at 2)

FACTUAL BACKGROUND

The court had screened plaintiff's complaint and dismissed it for failure to state a claim. Plaintiff was ordered to file either an amended complaint or a notice of voluntary dismissal within thirty days and was warned that noncompliance could result in dismissal. Plaintiff did not comply, although the court found that service at his record address was effective.

PROCEDURAL HISTORY

The court previously screened plaintiff's complaint and dismissed it for failure to state a claim, while allowing thirty days to file an amended complaint or notice of voluntary dismissal. The court warned that failure to comply could result in dismissal. Plaintiff did not comply, and the magistrate judge recommended dismissal without prejudice for failure to prosecute, failure to obey court orders, and failure to state a claim, subject to objections under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000)
- *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995)
- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
- *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)
- *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
- *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998)
- *Martinez v. Yist*, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 WILLIAM J. WHITSITT, Case No. 2:24-cv-0407-DC-JDP (PS) 12 Plaintiff,
13 v. FINDINGS AND RECOMMENDATIONS 14 DOMUS MANAGEMENT CO., et al., 15
Defendants. 16 17 On February 24, 2025, I screened plaintiff's complaint and dismissed it for
failure to state 18 a claim. ECF 4.

I ordered plaintiff to file, within thirty days, either an amended complaint or a 19 notice of
voluntary dismissal of this action. Id. I also warned plaintiff that failure to comply with 20 that
order could result in a recommendation that this action be dismissed. Id. at 4. Plaintiff has 21 not
complied with the February 24, 2025 order, and the time to do so has passed.¹ 22 The court has
the inherent power to control its docket and may, in the exercise of that 23 power, impose
sanctions where appropriate, including dismissal.

Bautista v. Los Angeles Cnty., 24 216 F.3d 837, 841 (9th Cir. 2000); see Local Rule 110 ("Failure
of counsel or of a party to 25 comply with these Rules or with any order of the Court may be
grounds for imposition by the 26 27 1 Although it appears from the file that plaintiff's copy of the
February 24, 2025 order was returned, plaintiff was properly served.

Pursuant to Local Rule 182(f), service of documents at 28 the record address of the party is fully
effective. 1 Court of any and all sanctions... within the inherent power of the Court."). 2 A court
may dismiss an action based on a party's failure to prosecute an action, failure to 3 obey a court
order, or failure to comply with local rules. See Ghazali v. Moran, 46 F.3d 52, 53-54 4 (9th Cir.

1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 5 1260-61
(9th Cir. 1992) (dismissal for failure to comply with an order to file an amended 6 complaint);
Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to 7 comply with
local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. 8 U.S. Postal
Serv., 833 F.2d 128, 130 (9th Cir.

1987) (dismissal for failure to comply with court 9 order); Henderson v. Duncan, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of 10 prosecution and failure to comply with local rules).
11 In recommending that this action be dismissed for failure to comply with court orders, I 12
have considered "(1) the public's interest in expeditious resolution of litigation; (2) the court's 13
need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy 14
favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives."
15 Ferdik, 963 F.2d at 1260-61 (citation omitted).

16 Here, plaintiff failed to respond to the order directing him to file an amended complaint or 17
notice of voluntary dismissal. See ECF No. 4. Therefore, the public interest in expeditious 18
resolution of litigation, the court's need to manage its docket, and the risk of prejudice to the 19

defendant all support imposition of the sanction of dismissal. Lastly, my warning to plaintiff that failure to obey court orders will result in dismissal satisfies the “considerations of the alternatives” requirement.

Ferdik, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 22 F.2d at 1424. The February 24, 2025 order expressly warned plaintiff that his failure to comply with court orders would result in dismissal. ECF No. 4. Plaintiff had adequate warning that dismissal could result from his noncompliance. I therefore find that the balance of factors weighs in favor of dismissal.

Accordingly, it is hereby RECOMMENDED that: 1. This action be dismissed without prejudice for failure to prosecute, failure to comply with court orders, and failure to state a claim for the reasons set forth in the court’s February 24, 2025 order. See ECF No. 4.

The Clerk of Court be directed to close the case. These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of service of these findings and recommendations, any party may file written objections with the court and serve a copy on all parties.

Any such document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations,” and any response shall be served and filed within fourteen days of service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. See Turner v. Duncan, 158 F.3d 449, 455 (9th Cir.

1998); Martinez v. Yist, 951 F.2d 1153 (9th Cir. 11 1991). IT IS SO ORDERED. (ie — Dated: _ April 22, 2025 Q—— 15 JEREMY D. PETERSON 16 UNITED STATES MAGISTRATE JUDGE 17 18 19 20 21 22 23 24 25 26 27 28