

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gibson v. Castellanos

Gibson · No. 1:21-cv-00794 KES GSA (PC) · Decided April 9, 2025

SUMMARY

The document contains findings and recommendations by a United States Magistrate Judge in a prisoner civil-rights action under 42 U.S.C. § 1983. The magistrate judge recommends dismissal without prejudice under Federal Rule of Civil Procedure 41(b) and Local Rule 110 for failure to prosecute and failure to obey court orders. The recommendation also advises denying the defendant’s exhaustion-based partial motion for summary judgment without prejudice as moot.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Gary S. Austin
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 9, 2025
DOCKET	1:21-cv-00794 KES GSA (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A magistrate judge issued findings and recommendations that the prisoner civil-rights action be dismissed without prejudice for failure to prosecute and failure to obey court orders, and that the defendant's exhaustion-based partial summary-judgment motion be denied without prejudice as moot.
STANDARD OF REVIEW	Dismissal for failure to prosecute or failure to comply with court orders is reviewed under the district court's discretionary authority, applying the five Malone factors.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- sanctions
- summary judgment
- civil procedure
- section 1983
- prisoners rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) and Local Rule 110 because Plaintiff failed to prosecute and failed to obey court orders.
2. Whether the defendant's exhaustion-based partial motion for summary judgment should be denied without prejudice as moot after recommending dismissal of the action.

HOLDINGS

1. A plaintiff's repeated failure to respond to a pending motion and multiple court orders, after adequate time and notice, supports dismissal without prejudice under Federal Rule of Civil Procedure 41(b) and Local Rule 110 when the Malone factors favor dismissal.
2. The defendant's exhaustion-based partial motion for summary judgment should be denied without prejudice as moot when the action itself is recommended for dismissal without prejudice for failure to prosecute and failure to obey court orders.

KEY QUOTATIONS

“A district court must weigh five factors in determining whether to dismiss a case for failure to comply with a court order: “(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 the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.”” (at 3)

FACTUAL BACKGROUND

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, alleged retaliation and excessive force by correctional officers at Kern Valley State Prison. The remaining defendant filed a partial motion for summary judgment asserting failure to exhaust administrative remedies. Plaintiff did not respond to that motion, an order to show cause, or an order requiring him to file a current-address notice, and the court found that its prior mailings had not been returned as undeliverable.

PROCEDURAL HISTORY

Plaintiff filed a § 1983 action alleging First and/or Eighth Amendment retaliation and excessive-force claims. After the operative second amended complaint was screened and served, one defendant was dismissed for failure of service. The remaining defendant filed an exhaustion-based partial summary-judgment motion, but Plaintiff did not respond to that motion, an order to show cause, or an order requiring notice of his current address. The magistrate judge recommended dismissal and denial of the motion as moot, subject to objections and review by the assigned district judge.

DISPOSITION

other

CASES CITED

- Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995)
- Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)
- Thompson v. Housing Authority of City of Los Angeles, 782 F.2d 829 (9th Cir. 1986) (per curiam)
- Whitaker v. Superior Court of San Francisco, 514 U.S. 208, 210 (1994)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Martinez v. Ylst, 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 REGINALD GIBSON, No. 1:21-cv-00794 KES GSA (PC) 12 Plaintiff,
FINDINGS AND RECOMMENDATIONS 13 v. ORDER RECOMMENDING MATTER BE
DISMISSED WITHOUT PREJUDICE FOR 14 E. CASTELLANOS, et al., FAILURE TO
PROSECUTE AND FOR FAILURE TO OBEY COURT ORDERS 15 Defendants. (ECF Nos. 58,
59) 16 ORDER RECOMMENDING DENIAL OF 17 DEFENDANT’S MOTION FOR PARTIAL
SUMMARY JUDGMENT WITHOUT 18 PREJUDICE AS MOOT 19 PLAINTIFF’S
OBJECTIONS DUE IN FOURTEEN DAYS 20 21 Plaintiff, a state prisoner proceeding pro se and
in forma pauperis, has filed this civil 22 rights action seeking relief under 42 U.S.C. § 1983.

The matter was referred to a United States 23 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 302. 24 Before this Court is Defendants’ motion for partial summary judgment
requesting that 25 Plaintiff’s First Amendment claim retaliation be dismissed for failure to
exhaust. ECF No. 54. 26 Plaintiff has not filed a response to the motion, nor has he filed a
response to the Court’s order 27 directing him to show cause why Defendants’ motion for
summary judgment should not be 28 1 granted.

See ECF No. 58 (order directing Plaintiff to show cause). In addition, Plaintiff has not 2 filed a
response to the Court’s recent order which directed him to file a notice of current address 3 with
the Court. See ECF No. 59. 4 For the reasons stated below, the undersigned will recommend that
this case be dismissed 5 without prejudice for failure to prosecute and for failure to obey court
orders.

Consistent with 6 this recommendation, it will also be recommended that Defendant’s exhaustion-
based partial 7 motion for summary judgment be denied without prejudice as moot. The parties
will be given 8 fourteen days to file objections to these findings and recommendations. 9 I.
RELEVANT PROCEDURAL HISTORY 10 A. Screening of Second Amended Complaint 11 On
May 17, 2021, Plaintiff’s complaint was docketed.

ECF No. 1. On April 13, 2023, 12 the second amended complaint (“SAC”) (ECF No. 17), which is
the operative complaint, was 13 screened. In it, Plaintiff alleged First and/or Eighth Amendment

claims of retaliation and 14 excessive force against Defendants E. Castellanos and C. Riley, both of whom were correctional 15 officers at Kern Valley State Prison in December 2019 and April 2020, the time of the incidents 16 in question.

See ECF No. 16 at 1-8. 17 On July 5, 2023, Plaintiff's second amended complaint was ordered served. ECF No. 20. 18 Ultimately, in January 2024, Defendant Riley was dismissed due to Plaintiff's failure to effectuate 19 service on him. See ECF Nos. 25, 29, 36 (notice of intent not to waive service; order 20 recommending dismissal of Defendant Riley; grant of same, respectively).

21 B. Issuance of Discovery and Scheduling Order; Motion to Vacate Its Dates 22 On January 8, 2024, the Court issued its discovery and scheduling order. ECF No. 37. In 23 it, any exhaustion-based motions were ordered to be filed by April 19, 2024. Id. at 5. Thereafter, 24 on April 12, 2024, Defendant filed a motion to compel. ECF No. 46.

On the same day, 25 Defendant also moved to have all outstanding dates in the discovery and scheduling order vacated 26 because Plaintiff had yet to file responses to his discovery requests related to Plaintiff's failure to 27 exhaust. See ECF No. 47 at 3-4, 6-7 (Defendant's motion to vacate case schedule). 28 1 On April 30, 2024, the Court granted Defendant's motion to vacate the case schedule.

2 ECF No. 49. Approximately two weeks later, the Court ordered Plaintiff to show cause why 3 Defendant's motion to compel should not be granted. ECF No. 50. On June 6, 2024, Defendant 4 filed a motion to withdraw his motion to compel (ECF No. 52), which eventually the Court 5 granted (ECF No. 56). This effectively relieved Plaintiff of responding that order to show cause 6 that had been issued by the Court.

7 C. Defendant's Filing of Exhaustion-Based Motion for Partial Summary Judgment 8 On August 16, 2024, Defendant filed the instant exhaustion-based motion for partial 9 summary judgment. ECF No. 54. As a result, Plaintiff's response to the motion was due twenty- 10 one days later, on September 6, 2024. See Local Rule 230(l). 11 D. Order Directing Plaintiff to Show Cause or File Response to Motion for 12 Summary Judgment 13 Plaintiff failed to file a response to Defendant's exhaustion-based partial motion for 14 summary judgment.

Consequently, on September 30, 2024, the Court ordered Plaintiff to show 15 cause why Defendant's motion should not be granted. ECF No. 58. As an alternative to filing the 16 showing of cause, Plaintiff was given the opportunity to file a response to Defendant's motion. 17 He was given twenty-one days to take either course of action, making any response filed due on 18 or around October 21, 2024.

19 To date, Plaintiff has still not filed a response to Defendant's exhaustion-based partial 20 motion for summary judgment, nor has he filed a response to the Court's order to show cause. 21 Nor has Plaintiff requested an extension of time to take either of the courses of action. 22 E. Order

Directing Plaintiff to File Notice of Current Address 23 On March 21, 2025, Plaintiff was ordered to file a notice of current address with the Court 24 and to do so within seven days.

ECF No. 59. More than seven days have now passed and 25 Plaintiff has not responded to the Court's order, nor has he requested an extension of time to do 26 so. As with the Court's order directing Plaintiff to show cause, Plaintiff has not responded to this 27 order of the Court in any way. 28 1 II. APPLICABLE LAW 2 A. Federal Rule of Civil Procedure 41(b) and Local Rule 110 3 Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails 4 to prosecute or he fails to comply with a court order.

See Fed. R. Civ. P. 41(b). Local Rule 110 5 also permits the imposition of sanctions when a party fails to comply with a court order. L.R. 6 110. Only in rare cases will an appellate court question the exercise of discretion in connection 7 with the application of local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) 8 (upholding dismissal of case pursuant to district court local rule because plaintiff failed to file 9 opposition to defendants' motion to compel/motion to dismiss).

10 B. *Malone Factors* 11 The Ninth Circuit has clearly identified the factors to consider when dismissing a case for 12 failure to comply with a court order. It writes: 13 A district court must weigh five factors in determining whether to dismiss a case 14 for failure to comply with a court order: "(1) the public's interest in expeditious 15 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on 16 their merits; and (5) the availability of less drastic sanctions." 17 18 *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir.

1987) (quoting *Thompson v. 19 Hous. Auth. of City of Los Angeles*, 782 F.2d 829 (9th Cir. 1986) (per curiam)). 20 III. DISCUSSION 21 A. Rule 41(b) and Local Rule 110 Support Dismissal of This Case 22 The fact that Plaintiff has: (1) failed to file a response to Defendant's exhaustion-based 23 partial motion for summary judgment, which was filed back in August of 2024; (2) failed to 24 respond to the Court's order to show cause which was issued back in September of 2024, and (3) 25 has failed to respond to the Court's recent March 2025 order which directed him to file a notice of 26 current address, collectively warrant dismissal of this matter, in accord with Rule 41(b).

This 27 consistent inaction on Plaintiff's part also warrants the imposition of sanctions in the form of 28 dismissal of this case, consistent with Local Rule 110. 1 B. *Application of Malone Factors Supports the Dismissal of This Case* 2 1. *Expeditious Resolution of Litigation; Court's Need to Manage Its Docket* 3 Plaintiff has been given more than ample time to file a response to Defendant's 4 exhaustion-based partial motion for summary judgment, and to respond to the Court's orders to 5 show cause and file a notice of current address.

Yet, he has failed to respond to these orders as 6 required, nor has he contacted the Court to provide exceptional reasons for not having done so. 7 The Eastern District Court has an unusually large caseload.¹ “[T]he goal of fairly 8 dispensing justice... is compromised when the Court is forced to devote its limited resources to 9 the processing of frivolous and repetitious requests.” *Whitaker v. Superior Court of San 10 Francisco*, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted).

Thus, it follows that 11 keeping this case on the Court’s docket when Plaintiff has consistently demonstrated since 12 August of last year that he clearly has no interest in prosecuting it in a timely manner, is not a 13 good use of the Court’s already taxed resources.

Moreover, keeping this matter on the docket 14 until Plaintiff chooses to respond would clearly be an exercise in futility, and it would stall a 15 quicker disposition of this case. Finally, in fairness to the many other litigants who currently 16 have cases before the Court, no additional time should be spent on this matter, irrespective of any 17 opposition to the instant recommendation of dismissal that Plaintiff might file after the issuance 18 of this order.

19 2. Risk of Prejudice to Defendant 20 Dismissal will benefit Defendant because he will avoid a possible judgment against him. 21 3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on 22 Merits 23 24 1 The Eastern District of California carries one of the largest and most heavily weighted caseloads in the nation. See Office of the Clerk, United States District Court, Eastern District of 25 California, 2024 Annual Report, “Weighted Filings,” p. 35 (2024) (“[O]ur weighted caseload far exceeds the national average... ranking us fourth in the nation and first in the Ninth Circuit.”).

26 This problem is compounded by a shortage of jurists to review its pending matters. See generally 27 *id.* (stating 2024 Biennial Judgeship Survey recommended request for four additional permanent judgeships for Eastern District of California). 28 1 Finally, Plaintiff has allowed this case to languish on the Court’s docket for over eight 2 months after the filing of Defendant’s exhaustion-based partial motion for summary judgment.

3 Additionally, Plaintiff has neither responded to the Court’s related, subsequently issued order to 4 show cause, nor to the Court’s order directing him to file a notice of current address. This is 5 despite the fact that none of the Court’s orders have been returned to it marked “undeliverable, 6 which, in turn, permits this Court to find that Plaintiff has received Defendant’s motion and the 7 Court’s orders, but that he is simply choosing not to respond to them.

See Local Rule 182(f) 8 (stating absent notice otherwise, service of documents at prior address of pro se party is fully 9 effective). 10 The Court’s finding that Plaintiff is simply choosing not to respond to the Court’s orders 11 and prosecute this case is further supported by the fact that a recent search on the California 12 Department of Corrections and Rehabilitation’s website for

Plaintiff by his name and/or his 13 prison ID number indicates that Plaintiff is still in state custody at Salinas Valley State Prison.^{2 14} The Court takes judicial notice of this fact.

See Fed. R. Evid. 201 (court may take judicial notice 15 of facts that are capable of accurate determination by sources whose accuracy cannot reasonably 16 be questioned). Thus, in the aggregate, without Plaintiff continuing to take an active role to move 17 forward the very case that he brought, this matter cannot be prosecuted any further, nor can it be 18 disposed of on its merits.

19 IV. CONCLUSION 20 For these reasons, consistent with Federal Rule of Civil Procedure 41(b) and Local Rule 21 110, and having considered the Malone factors, the undersigned recommends that this matter be 22 dismissed without prejudice for failure to prosecute and for failure to obey a court order.

In 23 addition, the undersigned will recommend that Defendant's exhaustion-based partial motion for 24 summary judgment be denied without prejudice as moot. The parties shall be given fourteen days 25 to file objections to this order. 26 Accordingly, IT IS HEREBY RECOMMENDED that:
27 2 See <https://ciris.mt.cdcr.ca.gov/search> (search CDCR Number field for "P38644," or search 28 First Name field for "Reginald" and Last Name field for "Gibson") (last visited April 7, 2025).

1 1. This matter be DISMISSED without prejudice for failure to prosecute and for failure 2 to obey court orders. See Fed. R. Civ. P. 41(b) and Local Rule 110, and 3 2. Defendant's exhaustion-based partial motion for summary judgment (ECF No. 54) be 4 DENIED without prejudice as MOOT. 5 These findings and recommendations are submitted to the United States District Judge 6 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within fourteen days 7 after being served with these findings and recommendations, any party may file written 8 objections with the Court. Such a document should be captioned "Objections to Magistrate 9 Judge's Findings and Recommendations," and it shall not exceed fifteen pages. 10 The Court will not consider exhibits attached to the objections.

To the extent that a party 11 wishes to refer to any exhibit, when possible, the party must reference the exhibit in the record by 12 its CM/ECF document and page number or reference the exhibit with specificity. Any pages filed 13 in excess of the fifteen-page limit may be disregarded by the District Judge when conducting the 14 28 U.S.C. § 636(b)(1)(C) review of the findings and recommendations.

A party's failure to file 15 objections within the specified time may result in the waiver of certain rights on appeal. See 16 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014); *Martinez v. Ylst*, 951 F.2d 1153 (9th 17 Cir. 1991). 18 IT IS SO ORDERED. 19 20 Dated: April 9, 2025 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE 21 22 23 24 25 26 27 28

