

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

Thomas v. Aguirre

Thomas · No. 1:24-cv-00281-KES-SKO · Decided August 1, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 EDWARD THOMAS, Case No.: 1:24-cv-00281-KES-SKO 12 Plaintiff,
FINDINGS AND RECOMMENDATIONS TO DISMISS THIS ACTION FOR 13 v.
PLAINTIFF’S FAILURE TO OBEY COURT ORDERS AND FAILURE TO 14 J. AGUIRRE, et
al., PROSECUTE 15 Defendants. 14-DAY OBJECTION PERIOD 16 17 Plaintiff Edward Thomas
is proceeding pro se in this civil rights action pursuant to 42 18 U.S.C. § 1983.

19 I. RELEVANT BACKGROUND 20 Plaintiff filed a second amended complaint on October 15,
2024. (Doc. 22.) The Court 21 issued its Second Screening Order on April 21, 2025. (Doc. 24.) It
found Plaintiff’s second 22 amended complaint violates Rule 8 of the Federal Rules of Civil
Procedure (id. at 5-6), and fails 23 to state any cognizable claim upon which relief can be granted
(id. at 8-17).

Plaintiff was afforded 24 one final opportunity to file a third amended complaint, or a notice of
voluntary dismissal, within 25 21 days, curing the deficiencies identified in the order. (Id. at 18-
19.) 26 On May 15, 2025, Plaintiff filed a document titled “Petitioners Motion for Kelly 27
Stay/Rhines v. Weber Stay Untill [sic] Further Notice.” (Doc. 25.) 1 On May 23, 2025, the Court
issued its Order Denying Rhines Stay and Order Granting 60- 2 Day Extension of Time Within
Which to File Third Amended Complaint.

(Doc. 26.) 3 Although more than 60 days plus time for mailing have passed, Plaintiff has failed to
file 4 a third amended complaint. Thus, the Court will recommend this action be dismissed
without 5 prejudice for Plaintiff’s failure to obey court orders and failure to prosecute. 6 II.
DISCUSSION 7 A. Legal Standards 8 The Local Rules, corresponding with Federal Rule of Civil
Procedure 11, provide, 9 “[f]ailure of counsel or of a party to comply with... any order of the
Court may be grounds for 10 the imposition by the Court of any and all sanctions... within the
inherent power of the Court.” 11 Local Rule 110. “District courts have inherent power to control
their dockets” and, in exercising 12 that power, may impose sanctions, including dismissal of an
action.

Thompson v. Housing Auth., 13 City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court
may dismiss an action based on a 14 party’s failure to prosecute an action, obey a court order, or
comply with local rules. See, e.g., 15 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)

(dismissal for failure to comply with a 16 court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir.

17 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 18 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules). 19 In determining whether to dismiss an action, the Court must consider several factors: 20 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its 21 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of 22 cases on their merits; and (5) the availability of less drastic sanctions.

Henderson, 779 F.2d at 23 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). 24 B. Analysis 25 Here, Plaintiff has failed to file a third amended complaint, or notice of voluntary 26 dismissal, as directed in the Second Screening Order.

The Court cannot effectively manage its 27 docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first and second 1 manage its docket—weigh in favor of dismissal. *Carey*, 856 F.2d at 1440. 2 The third factor weighs in favor of dismissal since a presumption of injury arises from the 3 occurrence of unreasonable delay in prosecuting an action.

Anderson v. Air W., 542 F.2d 522, 524 4 (9th Cir. 1976). Here, the Court's April 21, 2025, screening order provided Plaintiff 21 days 5 within which to file a third amended complaint or a notice of voluntary dismissal.

On May 23, 6 2025, Plaintiff was granted a 60-day extension of time within which to file the third amended 7 complaint. Plaintiff has failed to comply with the Court's orders and the time to do so has now 8 passed. His inaction amounts to an unreasonable delay in prosecuting this action resulting in a 9 presumption of injury.

Therefore, the third factor—a risk of prejudice to defendants—also weighs 10 in favor of dismissal. *Carey*, 856 F.2d at 1440. 11 The fourth factor usually weighs against dismissal because public policy favors 12 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).

However, 13 “this factor lends little support to a party whose responsibility it is to move a case toward 14 disposition on the merits but whose conduct impedes progress in that direction.” In re 15 Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) 16 (citation omitted). By failing to file a third amended complaint or a notice of voluntary dismissal, 17 or to otherwise contact the Court, Plaintiff is not moving this case forward and is impeding its 18 progress.

Thus, the fourth factor—the public policy favoring disposition of cases on their 19 merits—weighs in favor of dismissal. *Carey*, 856 F.2d at 1440. 20 Finally, the Court's warning to a party

that failure to obey the court's orders will result in 21 dismissal satisfies the "considerations of the alternatives" requirement. Ferdik, 963 F.2d at 1262. 22 Here, the Court's May 23, 2025, Order warned as follows: "Plaintiff is advised that a failure to 23 comply with this order may result in a recommendation that this action be dismissed for a 24 failure to obey court orders and failure to prosecute." (Doc.

26 at 4, emphasis in original.) 25 Additionally, the Court's Second Screening Order warned: "If Plaintiff fails to comply with this 26 order, the Court will recommend that this action be dismissed, without prejudice, for 27 failure to obey a court order and for failure to prosecute." (Doc. 24 at 19, emphasis in 1 Case, issued March 7, 2024, Plaintiff was advised, in relevant part: "In litigating this action, the 2 parties must comply with this Order, the Federal Rules of Civil Procedure ("Fed.

R. Civ. P."), and 3 the Local Rules of the United States District Court, Eastern District of California ("Local Rules"), 4 as modified by this Order. Failure to so comply will be grounds for imposition of sanctions which 5 may include dismissal of the case. Local Rule 110; Fed. R. Civ. P. 41(b)." (Doc. 2 at 1.)

Thus, 6 Plaintiff had adequate warning that dismissal could result from his noncompliance. Therefore, the 7 fifth factor—the availability of less drastic sanctions—also weighs in favor of dismissal. Carey, 8 856 F.2d at 1440. 9 In sum, Plaintiff has failed to comply with the Court's orders, and in doing so, has failed 10 to prosecute this action. Whether Plaintiff has done so intentionally or mistakenly is 11 inconsequential.

It is Plaintiff's responsibility to comply with the Court's orders and to prosecute 12 this action. The Court declines to expend its limited resources on a case that Plaintiff has chosen 13 to ignore. 14 III. CONCLUSION AND RECOMMENDATIONS 15 For the foregoing reasons, the Court RECOMMENDS that this action be DISMISSED 16 without prejudice for Plaintiff's failure to obey court orders and failure to prosecute.

17 These Findings and Recommendations will be submitted to the United States District 18 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 19 after being served with a copy of these Findings and Recommendations, a party may file written 20 objections with the Court. Local Rule 304(b).

The document should be captioned, "Objections to 21 Magistrate Judge's Findings and Recommendations" and shall not exceed fifteen (15) pages 22 without leave of Court and good cause shown. The Court will not consider exhibits attached to 23 the Objections.

To the extent a party wishes to refer to any exhibit(s), the party should reference 24 the exhibit in the record by its CM/ECF document and page number, when possible, or otherwise 25 reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page limitation 26 may be

disregarded by the District Judge when reviewing these Findings and Recommendations 27 under 28 U.S.C. § 636(b)(1)(C).

A party's failure to file any objections within the specified time 1 may result in the waiver of certain rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 2 (9th Cir. 2014). 3 IT IS SO ORDERED. 4 5 Dated: July 31, 2025 /s/ Sheila K. Oberto. UNITED STATES MAGISTRATE JUDGE 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27