

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gedell v. Garland

Gedell · No. 2:24-cv-02252-DJC-SCR · Decided August 11, 2025

SUMMARY

A United States Magistrate Judge recommends dismissing the pro se plaintiff's action without prejudice for failure to effect service and failure to prosecute. The recommendation applies Federal Rule of Civil Procedure 4(m) and evaluates the Ninth Circuit's five-factor test for dismissal under *Ferdik v. Bonzelet*.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	August 11, 2025
DOCKET	2:24-cv-02252-DJC-SCR
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal without prejudice for failure to effect service and failure to prosecute.
STANDARD OF REVIEW	The magistrate judge applied Federal Rule of Civil Procedure 4(m) and the Ninth Circuit's five-factor test for dismissal for failure to prosecute.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations
PARTIES	John R. Gedell v. Merrick B. Garland, et al.

TOPICS

- service of process
- civil procedure
- sanctions

PRACTICE AREAS

- Civil procedure
- Federal courts
- Pro se litigation

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 4(m) because plaintiff failed to serve the defendants within the required period and showed neither good cause nor a need for additional time.
2. Whether the action should be dismissed for failure to prosecute under the Ninth Circuit's five-factor test.

HOLDINGS

1. Dismissal without prejudice was appropriate because plaintiff failed to serve defendants within 90 days, did not request additional time, and did not show good cause for an extension.
2. Dismissal without prejudice was appropriate for failure to prosecute after balancing the five Ninth Circuit factors: the public interest in expeditious resolution, docket management, prejudice to defendants, availability of less drastic alternatives, and public policy favoring disposition on the merits.

KEY QUOTATIONS

“First, under Federal Rule of Civil Procedure 4(m), if service is not made within 90 days, the Court “must dismiss the action without prejudice” unless the plaintiff provides good cause for an extension of time.” (at 1)

“In considering whether to dismiss a claim for failure to prosecute, the Court considers: 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 defendants; 4) the availability of less drastic alternatives; and 5) the public policy favoring disposition of cases on their merits.” (at 2)

“The Court finds that lesser sanctions would be futile given Plaintiffs lack of participation in the litigation.” (at 3)

FACTUAL BACKGROUND

John R. Gedell filed the action on August 19, 2024, paid the filing fee, and had summons issued. He thereafter made no additional filings, did not effect service on the defendants, and did not respond to the court's order to show cause issued on July 14, 2025. Nearly a year had passed without plaintiff's participation when the court issued its recommendation.

PROCEDURAL HISTORY

Plaintiff filed the action on August 19, 2024, paid the filing fee, and obtained issuance of summons. Plaintiff made no further filings, did not serve the defendants, and did not respond to the court's July 14, 2025 order to show cause. The magistrate judge recommended dismissal without prejudice and entry of judgment, subject to objections and review by the assigned district judge under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- Efaw v. Williams, 473 F.3d 1038, 1040 (9th Cir. 2007)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)
- Pagtalunan v. Galaza, 291 F.3d 639, 641-43 (9th Cir. 2002)
- Allen v. Bayer Corp. (In re Phenylpropanolamine Prods. Liab. Litig.), 460 F.3d 1217, 1228 (9th Cir. 2006)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

(PS) Gedell v. Garland

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 JOHN R. GEDELL, No. 2:24-cv-02252-DJC-SCR

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 MERRICK B. GARLAND, et al., 15 Defendants. 16 17 Plaintiff is proceeding pro se in this matter which is referred to the undersigned pursuant 18 to Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Plaintiff filed this action on August 19, 19 2024, paid the filing fee, and summons were issued. Thereafter, there were no additional filings 20 by Plaintiff, and no appearance by any Defendant. On July 14, 2025, this Court issued an Order 21 to Show Cause (OSC) which directed Plaintiff to show cause in writing within 14 days as to why 22 the action should not be dismissed for failure to effect service and/or for failure to prosecute. 23 ECF No. 5 at 2. The OSC further cautioned: “If Plaintiff fails to respond, the court will 24 recommend dismissal of the action.” Id. A response was due by July 28, 2025, and Plaintiff did 25 not respond to the OSC. 26 The Court now recommends that dismissal of the action is appropriate for both reasons set 27 forth in the OSC. First, under Federal Rule of Civil Procedure 4(m), if service is not made within 28 90 days, the Court “must dismiss the action without prejudice” unless the plaintiff provides good 1 cause for an extension of time. The Rule also allows for the Court to extend the time even 2 without a showing of good cause. See Efaw v. Williams, 473 F.3d 1038, 1040 (9th Cir. 2007) 3 (“Additionally, the rule [4(m)] permits the district court to grant an extension even in the absence 4 of good cause.”). Here, there has been no request for additional time, no showing of good cause, 5 and nearly a year has passed since the filing of this action. 6 Second, the Court has considered the five factors set forth in Ferdik v. Bonzelet, 963 F.2d 7 1258, 1260 (9th Cir. 1992), and concludes that dismissal for failure to prosecute is appropriate. 8 In considering whether to dismiss a claim for failure to prosecute, the Court considers: 1) the 9 public’s interest in expeditious resolution of litigation; 2) the court’s need to manage its docket; 10 3) the risk of prejudice to defendants; 4) the

availability of less drastic alternatives; and 5) the 11 public policy favoring disposition of cases on their merits. *Id.* at 1260-61. 12 1. Public's interest in expeditious resolution of the litigation 13 "The public's interest in expeditious resolution of litigation always favors dismissal." 14 *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999). This action was filed nearly a year 15 ago, in August 2024. Plaintiff has made no filings in this action for nearly a year. This factor 16 weighs in favor of dismissal. See *Pagtalunan v. Galaza*, 291 F.3d 639, 641 (9th Cir. 2002) 17 ("Given Pagtalunan's failure to pursue the case for almost four months, this factor weighs in 18 favor of dismissal."). 19 2. Court's need to manage its docket 20 In evaluating this factor, the trial court "is in the best position to determine whether the 21 delay in a particular case interferes with docket management." *Pagtalunan*, 291 F.3d at 642. 22 This case has been on the Court's docket for nearly a year. The Court's need to manage its 23 docket weighs in favor of dismissal, particularly given the heavy caseload in this District. 24 3. Risk of prejudice to defendant 25 In evaluating this factor, the Court considers whether "plaintiff's actions impaired 26 defendant's ability to proceed to trial or threatened to interfere with the rightful decision of the 27 case." *Pagtalunan*, 291 F.3d at 642. Limited delays and the pendency of a lawsuit are 28 insufficient to establish prejudice. *Id.* However, "[u]nnecessary delay inherently increases the 1 || risk that witnesses' memories will fade and evidence will become stale." /d. at 643. As 2 || Defendants have not appeared, this factor weighs only slightly in favor of dismissal. 3 4. Availability of less drastic alternatives 4 The Court has considered the availability of less drastic alternatives. The Court has issued 5 || an OSC and has cautioned Plaintiff that non-compliance with the OSC would lead to a 6 || recommendation to dismiss the action. The Court finds that lesser sanctions would be futile given 7 || Plaintiff's lack of participation in the litigation. This factor weighs in favor of dismissal. 8 5. Public policy favoring disposition of cases on the merits 9 "Public policy favors disposition of cases on the merits." *Pagtalunan*, 291 F.3d at 643. 10 | This factor generally always weighs against dismissal, and some cases have stated it "strongly 11 | counsels against dismissal." *Allen v. Bayer Corp.* (In re Phenylpropanolamine Prods. Liab. 12 | Litig.), 460 F.3d 1217, 1228 (9th Cir. 2006). However, "this factor 'lends little support' to a party 13 | whose responsibility it is to move a case toward disposition on the merits but whose conduct 14 || impedes progress in that direction." /d. The Court finds this factor weighs against dismissal. 15 Accordingly, IT IS HEREBY RECOMMENDED that: 16 1. This action be dismissed without prejudice; and 17 2. The Clerk enter judgment and close this file. 18 These findings and recommendations will be submitted to the United States District Judge 19 | assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).. Within fourteen days 20 | after being served with these findings and recommendations, either party may file written 21 || objections with the court. The document should be captioned "Objections to Magistrate Judge's 22 | Findings and Recommendations." The parties are advised that failure to file objections within the 23 || specified time may result in waiver of the right to appeal the district court's order. *Martinez v. Yist*, 951 F.2d 1153 (9th Cir. 1991). 25 || DATED: August 11, 2025 26 mk

27 SEAN C. RIORDAN
UNITED STATES MAGISTRATE JUDGE

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