

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Emma Dunn and Alana Dunn v. Marclite Electrical Corporation
Florida, et al.

Dunn · No. 1:25-cv-00565-JLT-BAM · Decided December 30, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Emma Dunn’s action without prejudice for failure to prosecute. The recommendation is based on her failure to update her address after court mail was returned as undeliverable and her failure to file a required second amended complaint. The court applies Federal Rule of Civil Procedure 41(b) and Local Rule 183(b), and advises the parties of their right to object.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 30, 2025
DOCKET	1:25-cv-00565-JLT-BAM
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending sua sponte dismissal without prejudice for Plaintiff Emma Dunn's failure to prosecute and failure to keep the Court apprised of her current address.
STANDARD OF REVIEW	The court weighed the Ninth Circuit's five factors governing dismissal for lack of prosecution: the public's interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to defendants, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	unpublished
PARTIES	Emma Dunn, Alana Dunn v. Marclite Electrical Corporation Florida, et al.

TOPICS

civil procedure

motions to dismiss

default

PRACTICE AREAS

civil procedure

federal courts

QUESTIONS PRESENTED

1. Whether the Court should recommend dismissal without prejudice under Federal Rule of Civil Procedure 41(b) and Local Rule 183(b) because Emma Dunn failed to prosecute, failed to file a required second amended complaint, and failed to maintain a current address.
2. Whether the Ninth Circuit's five dismissal factors supported dismissal under the circumstances.

HOLDINGS

1. A court may dismiss an action sua sponte under Federal Rule of Civil Procedure 41(b) and Local Rule 183(b) when a pro se plaintiff fails to prosecute and fails to keep the Court apprised of a current address.
2. The applicable factors supported recommending dismissal without prejudice because the public and docket-management interests favored dismissal, unreasonable delay supported a presumption of prejudice, the merits policy provided little support to a plaintiff who impeded progress, and no reasonable lesser alternative was available.

KEY QUOTATIONS

“If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, 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 prosecute.” (at 1)

“In determining whether to dismiss an action for lack of prosecution, the district court is required to weigh several factors: (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 2)

“Based on the above, it is HEREBY RECOMMENDED that this action be dismissed without prejudice based on Plaintiff Emma Dunn’s failure to prosecute this action.” (at 3)

FACTUAL BACKGROUND

Plaintiffs proceeded pro se. After being granted leave to amend, they were directed to file a second amended complaint, but Emma Dunn did not do so. Mail sent to Emma Dunn was returned as undeliverable, and she failed to notify the Court of a current address within the required period or otherwise respond to court orders. Alana Dunn separately filed a voluntary dismissal, leaving Emma Dunn's failure-to-prosecute issue for recommendation.

PROCEDURAL HISTORY

Plaintiffs initiated the civil action on May 12, 2025. The Court granted leave to amend and directed Plaintiffs to file a second amended complaint within thirty days. After mail to Emma Dunn was returned as undeliverable, she failed to file a change of address or a second amended complaint. Alana Dunn separately filed a document construed as a notice of voluntary dismissal without prejudice, terminating her action under Rule 41(a)(1)(A)(i). The magistrate judge recommended dismissal of Emma Dunn's remaining action, subject to objections and review by the assigned district judge.

DISPOSITION

other

CASES CITED

- Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226-1229 (9th Cir. 2006)
- Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976)
- Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002)
- Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

Dunn

PER CURIAM.

1 2 3 4

5 UNITED STATES DISTRICT COURT

6 FOR THE EASTERN DISTRICT OF CALIFORNIA

7 8 EMMA DUNN and ALANA DUNN, Case No. 1:25-cv-00565-JLT-BAM 9 Plaintiffs,
FINDINGS AND RECOMMENDATIONS

REGARDING DISMISSAL OF ACTION FOR

10 v. FAILURE TO PROSECUTE

11 MARCLITE ELECTRICAL

CORPORATION FLORIDA, et al., 12 Defendants. 13 14 I. Background 15 Plaintiffs Emma Dunn and Alana Dunn, proceeding pro se, initiated this civil action 16 against defendants on May 12, 2025. On November 7, 2025, the Court granted Plaintiffs leave to 17 amend and directed Plaintiffs to file their second amended complaint within thirty days. (Doc. 18 15.) The order sent to Plaintiff Emma Dunn was returned as “Undeliverable, Return to Sender, 19 Attempted – Not Know, Unable to Forward” on November 24, 2025. (See Docket.) 20 On November 24, 2025, Plaintiff Alana Dunn filed a document titled “Dismissal without 21 Prejudice.” (Doc. 16.) The Court construed the filing as a notice of voluntary dismissal without 22 prejudice under Federal Rule of Civil

Procedure 41(a). (Doc. 17.) Plaintiff Alana Dunn's action 23 against defendants was therefore terminated by operation of law under Rule 41(a)(1)(A)(i). (Id.) 24 Additionally, the Court noted that mail sent to Plaintiff Emma Dunn was returned as 25 undeliverable and informed her of the requirement under Local Rule 183 to keep the Court 26 apprised as to her current address. (Id. at 1 n.1.) 27 II. Discussion 28 As Plaintiff Emma Dunn was previously informed, she is required to keep the Court 1 apprised of her current address at all times. Local Rule 183(b) provides: 2 Address Changes. A party appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a 3 plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within thirty 4 (30) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute. 5 6 Federal Rule of Civil Procedure 41(b) also provides for dismissal of an action for failure 7 to prosecute.¹ 8 Plaintiff Emma Dunn's address change was due no later than December 24, 2025. 9 Plaintiff Emma Dunn has failed to file a change of address or otherwise update the Court. She 10 also has failed to file a second amended complaint. The Court will therefore recommend that this 11 action be dismissed without prejudice for failure to prosecute. 12 "In determining whether to dismiss an action for lack of prosecution, the district court is 13 required to weigh several factors: (1) the public's interest in expeditious resolution of litigation; 14 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public 15 policy favoring disposition of cases on their merits; and (5) the availability of less drastic 16 sanctions." *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks and 17 citation omitted); *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 18 1226 (9th Cir. 2006). These factors guide a court in deciding what to do and are not conditions 19 that must be met in order for a court to take action. *In re PPA*, 460 F.3d at 1226 (citation 20 omitted). 21 Given Plaintiff Emma Dunn's failure to update her address, file an amended complaint, or 22 otherwise respond to this Court's orders, the need for expeditious resolution of litigation and the 23 Court's need to manage its docket weigh in favor of dismissal. *In re PPA*, 460 F.3d at 1227. The 24 third factor, risk of prejudice to the defendant, also weighs in favor of dismissal, as a presumption 25 of injury arises from the occurrence of unreasonable delay in prosecuting an action. *Anderson v. 26 Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against dismissal 27 1 Courts may dismiss actions sua sponte under Rule 41(b) based on the plaintiff's failure to prosecute. 28 *Hells Canyon Pres. Council v. U. S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (citation omitted). 1 because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 2 (9th Cir. 2002). However, "this factor lends little support to a party whose responsibility it is to 3 move a case toward disposition on the merits but whose conduct impedes progress in that 4 direction," which is the case here. *In re PPA*, 460 F.3d at 1228 (citation omitted). More 5 importantly, given the Court's apparent inability to communicate with Plaintiff, there are no other 6 reasonable alternatives available to address Plaintiff Emma Dunn's failure to prosecute this action 7 and her

failure to apprise the Court of her current address. Id. at 1228–29; Carey, 856 F.2d at 8 1441. 9 III. Conclusion and Recommendation 10 Based on the above, it is HEREBY RECOMMENDED that this action be dismissed 11 without prejudice based on Plaintiff Emma Dunn’s failure to prosecute this action. Fed. R. Civ. 12 P. 41(b); L.R. 183(b). 13 These Findings and Recommendations will be submitted to the United States District 14 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 15 fourteen (14) days after being served with these Findings and Recommendations, the parties may 16 file written objections with the court. The document should be captioned “Objections to 17 Magistrate Judge’s Findings and Recommendations.” Objections, if any, shall not exceed 18 fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page 19 number if already in the record before the Court. Any pages filed in excess of the 15-page 20 limit may not be considered. Plaintiff is advised that failure to file objections within the 21 specified time may result in the waiver of the “right to challenge the magistrate’s factual 22 findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing Baxter 23 v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 24 IT IS SO ORDERED. 25 26 Dated: December 30, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE
27 28