

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Moten v. Office of the Inspector General

Moten v. Office of the Inspector General · No. 1:25-cv-00188-KES-EPG · Decided April 15, 2025

SUMMARY

The court recommends dismissing Sharrod Moten’s 42 U.S.C. § 1983 action without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with court orders. The recommendation follows Plaintiff’s failure to file an amended complaint after the court determined that his original complaint did not comply with Rule 8 and was not filed under oath. Plaintiff was given 30 days to object to the findings and recommendations.

OPINION

(PC) Moten v. Office of the Inspector General

PER CURIAM.

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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

9 10 SHARROD MOTEN, Case No. 1:25-cv-00188-KES-EPG (PC) 11 Plaintiff, FINDINGS
AND RECOMMENDATIONS

12 TO DISMISS THIS ACTION WITHOUT

v.

13 PREJUDICE FOR FAILURE TO

OFFICE OF THE INSPECTOR PROSECUTE AND FAILURE TO

14 GENERAL, et al., COMPLY WITH COURT’S ORDERS

15 Defendants. OBJECTIONS, IF ANY,

DUE WITHIN 30 DAYS

16 17 Plaintiff Sharrod Moten is confined at Kern Valley State Prison and is proceeding pro 18 se
and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. Plaintiff sues 19 “Office
of the Inspector General, Ombudsman Tammy Falconer, and Kern Valley State Prison, 20 alleging
a deliberate conspiracy amongst Defendants to obstruct justice, shield themselves from 21
liability,” and violate Plaintiff’s constitutional rights. (See generally ECF No. 1). 22 For reasons
stated below, the Court recommends that this case be dismissed without 23 prejudice for failure to
prosecute and failure to comply with the Court’s orders.

24 I. BACKGROUND

25 On February 20, 2025, the Court screened Plaintiff's Complaint and found that it failed 26 to
comply with Rule 8 requirements and was not filed under oath. (ECF No. 19). The Court 27
granted Plaintiff leave to amend his complaint within thirty days of the order. (Id. at 4). That 28 1
deadline has passed, and Plaintiff has not filed an amended complaint or otherwise 2
communicated with the Court.

3 II. LEGAL STANDARDS

4 Under Federal Rule of Civil Procedure 41(b), a court may dismiss an action for failure 5 to
comply with court orders and to prosecute. In determining whether to dismiss an action 6 under
Rule 41(b) for failure to prosecute or failure to comply with a Court order, "the Court 7 must
weigh the following factors: (1) the public's interest in expeditious resolution of 8 litigation; (2)
the court's need to manage its docket; (3) the risk of prejudice to 9 defendants/respondents; (4) the
availability of less drastic alternatives; and (5) the public policy 10 favoring disposition of cases
on their merits." *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th
11 Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992)).

12 III. ANALYSIS

In applying the *Pagtalunan* factors to this case, the first factor weighs in favor of 13 dismissal,
because "[t]he public's interest in expeditious resolution of litigation always favors 14 dismissal."
Id. (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) 15 (internal
quotation marks omitted). 16 As to the second factor, the Court's need to manage its docket, "[t]he
trial judge is in 17 the best position to determine whether the delay in a particular case interferes
with docket 18 management and the public interest." *Id.* Here, Plaintiff has failed to amend his
complaint or 19 otherwise communicate with the Court. Allowing this case to proceed further
without any 20 indication that Plaintiff intends to prosecute his case is a waste of judicial
resources. See *Hall v. 21 San Joaquin County Jail*, No. 2:13-cv-0324 AC P, 2018 WL 4352909, at
*2 (E.D. Cal. Sept. 22 12, 2018) ("The court will not continue to drag out these proceedings when
it appears that 23 plaintiffs have no intention of diligently pursuing this case."). Therefore, the
second factor 24 weighs in favor of dismissal. 25 Turning to the third *Pagtalunan* factor, risk of
prejudice to Defendants, "pendency of a 26 lawsuit is not sufficiently prejudicial in and of itself to
warrant dismissal." *Pagtalunan*, 291 27 F.3d at 642 (citing *Yourish*, 191 F.3d at 991). However,
"delay inherently increases the risk that 28 1 witnesses' memories will fade and evidence will
become stale," *id.* at 643, and it is Plaintiff's 2 failure to comply with a court order that is causing
delay and preventing this case from 3 progressing. Therefore, the third factor weighs in favor of
dismissal. 4 As for the availability of lesser sanctions, the fourth *Pagtalunan* factor, at this stage in
5 the proceedings there is little available to the Court which would constitute a satisfactory lesser
6 sanction while protecting the Court from further unnecessary expenditure of its scarce 7
resources. Monetary sanctions are of little use, considering Plaintiff's incarceration and 8 in forma
pauperis status. And, given the stage of these proceedings, the preclusion of evidence 9 or
witnesses is not available. Moreover, dismissal without prejudice is the lesser sanction 10

available to the Court. Under Federal Rule of Civil Procedure 41(b), a court may dismiss an action with prejudice for failure to comply with court orders and to prosecute. Fed. R. Civ. P. 41(b); see also *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962) (holding that Rule 41(b) allows sua sponte dismissal by the Court because “[t]he authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an ‘inherent power,’ governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”) Therefore, the fourth factor also weighs in favor of dismissal. Finally, because public policy favors disposition on the merits, this factor weighs against dismissal. *Pagtalunan*, 291 F.3d at 643.

IV. CONCLUSION AND RECOMMENDATIONS

After weighing the factors, the Court finds that dismissal without prejudice is appropriate. Accordingly, IT IS RECOMMENDED that:

1. This action be dismissed without prejudice under Federal Rule of Civil

- Procedure 41(b) for failure to prosecute and failure to follow Court’s orders; and

2. The Clerk of Court be directed to close this case. These findings and recommendations will be submitted to the United States district judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being served with these findings and recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any objections shall be limited to no more than 4 pages including exhibits. Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). IT IS SO ORDERED.

Dated: April 15, 2025 [Je heey —

UNITED STATES MAGISTRATE JUDGE

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