

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

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 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 11 action with prejudice for failure to comply with court orders and to prosecute. Fed. R. Civ. P. 12 (41)(b); see also *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962) (holding that Rule 41(b) 13 allows sua sponte dismissal by the Court because “[t]he authority of a court to dismiss sua 14 sponte for lack of prosecution has generally been considered an ‘inherent power,’ governed not 15 by rule or statute but by the control necessarily vested in courts to manage their own affairs so 16 as to achieve the orderly and expeditious disposition of cases.”) Therefore, the fourth factor 17

also weighs in favor of dismissal. 18 Finally, because public policy favors disposition on the merits, this factor weighs 19 against dismissal. Pagtalunan, 291 F.3d at 643.

20 IV. CONCLUSION AND RECOMMENDATIONS

21 After weighing the factors, the Court finds that dismissal without prejudice is 22 appropriate. 23 Accordingly, IT IS RECOMMENDED that: 24 1. This action be dismissed without prejudice under Federal Rule of Civil

25 Procedure 41(b) for failure to prosecute and failure to follow Court's orders; and

26 2. The Clerk of Court be directed to close this case. 27 These findings and recommendations will be submitted to the United States district 28 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 1 || thirty days after being served with these findings and recommendations, Plaintiff may file 2 || written objections with the Court. The document should be captioned "Objections to Magistrate 3 || Judge's Findings and Recommendations." Any objections shall be limited to no more than 15 4 || pages including exhibits. 5 Plaintiff is advised that failure to file objections within the specified time may result in 6 || the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) 7 || (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 8 9 IT IS SO ORDERED. 10 |

Dated: _ April 15, 2025 [Je heey —

11 UNITED STATES MAGISTRATE JUDGE

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