

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

Nelson v. Duncan

No. 1:25-cv-00700-CDB (E.D. Cal. July 15, 2025) · No. 1:25-cv-00700-CDB · Decided July 15, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Lolita Nelson’s pro se, in forma pauperis action against Raymond Duncan and others. The court finds that the complaint fails to comply with Federal Rule of Civil Procedure 8, fails to state a cognizable claim or establish subject-matter jurisdiction and venue, and that Plaintiff failed to amend the complaint or otherwise comply with court orders. The recommendation is dismissal with prejudice for failure to state a claim and, alternatively, without prejudice for failure to prosecute and obey court orders.

CASE DETAILS

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| JURISDICTION       | United States District Court for the Eastern District of California                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED            | July 15, 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| DOCKET             | 1:25-cv-00700-CDB                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| DISPOSITION        | other                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE | A magistrate judge issued findings and recommendations in a pro se, in forma pauperis civil-rights action, recommending dismissal after Plaintiff failed to file an amended complaint following an initial screening order.                                                                                                                                                                                                                                                                                                                 |
| STANDARD OF REVIEW | On screening an in forma pauperis complaint, the court must dismiss a complaint that is frivolous or malicious, fails to state a claim, or seeks monetary relief from an immune defendant. The court also considers whether subject-matter jurisdiction and venue have been adequately established. For dismissal based on failure to prosecute or failure to obey court orders, the court weighs the Carey factors concerning expeditious resolution, docket management, prejudice, disposition on the merits, and less drastic sanctions. |
| PRECEDENTIAL VALUE | unpublished                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| PARTIES            | Lolita Nelson v. Raymond Duncan, Sanda Moody, D.A.<br>Office/Prosecutor, Janette Duncan, Dajion Hill                                                                                                                                                                                                                                                                                                                                                                                                                                        |

## TOPICS

civil procedure

pleadings

subject matter jurisdiction

venue

section 1983

## PRACTICE AREAS

civil procedure

civil rights

federal jurisdiction

## QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable claim under Federal Rule of Civil Procedure 8 and applicable civil-rights law.
2. Whether Plaintiff established a basis for federal subject-matter jurisdiction.
3. Whether Plaintiff established that venue was proper in the Eastern District of California.
4. Whether Plaintiff's failure to file an amended complaint warranted dismissal for failure to obey a court order and failure to prosecute.
5. Whether further leave to amend would be futile.

## HOLDINGS

1. The complaint failed to state a cognizable claim because it did not provide fair notice of the claims or the factual grounds supporting them, relied on conclusory allegations, and identified no viable civil cause of action based on the asserted criminal offenses.
2. Plaintiff failed to establish that the court had subject-matter jurisdiction because the complaint did not identify a viable federal cause of action and did not establish diversity jurisdiction.
3. The complaint failed to establish that venue was proper in the Eastern District of California.
4. Plaintiff's failure to file an amended complaint after being ordered and warned of the consequences supported dismissal for failure to obey a court order and failure to prosecute.
5. Further leave to amend would be futile because Plaintiff did not amend after being given an opportunity to cure the identified pleading, jurisdictional, and venue defects.

## KEY QUOTATIONS

*"[S]ection 1915(e) not only permits but requires a district court to dismiss an [IFP] complaint that fails to state a claim."* (at 10)

*"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 14)

## FACTUAL BACKGROUND

Plaintiff alleged that Defendants sent money to foreign countries to take from her benefits, used her identity, committed mail fraud, purchased property and businesses in her name, and conspired to torment and abuse her.

She also alleged that tenants framed her and that she was put on the streets while supporting a nonparty's health issue. The complaint did not clearly identify what each Defendant allegedly did, when or where the conduct occurred, or the legal basis for the claims.

## PROCEDURAL HISTORY

Plaintiff filed the complaint on June 9, 2025, and was granted leave to proceed in forma pauperis. On June 13, 2025, the court screened the complaint, found deficiencies including failure to state a cognizable claim, failure to establish subject-matter jurisdiction, and failure to show proper venue, and granted 21 days to amend. Plaintiff did not amend or otherwise respond, so the magistrate judge recommended dismissal with prejudice for failure to state a claim and futility of amendment, or alternatively without prejudice for failure to prosecute and failure to obey court orders and local rules. The recommendations were subject to review by an assigned district judge after a 14-day objection period.

## DISPOSITION

other

## CASES CITED

- Lopez v. Smith, 203 F.3d 1122, 1126-27, 1129 (9th Cir. 2000) (en banc)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Balisteri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990)
- Haines v. Kerner, 404 U.S. 519, 520-21 (1972)
- Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989)
- Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)
- Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980)
- Clinton v. Allison, No. 3:23-cv-01471-CAB-SBC, 2024 WL 1859956, at \*10 (S.D. Cal. Apr. 29, 2024)
- Jones v. Cnty. of Sonoma, No. 23-cv-02730-CRB, 2024 WL 1354496, at \*4 (N.D. Cal. Mar. 29, 2024)
- Bland v. Gross, No. 1:20-cv-00542-DAD-BAM (PC), 2021 WL 120964, at \*1 (E.D. Cal. Jan. 13, 2021)
- Washington v. Thuston, No. 1:24-cv-00254-HBK, 2024 WL 1722418, at \*4 (E.D. Cal. Apr. 18, 2024)
- Burns v. Cnty. of King, 883 F.2d 819, 821 (9th Cir. 1989) (per curiam)
- Woodrum v. Woodward Cnty., 866 F.2d 1121, 1126 (9th Cir. 1989)
- Mendocino Environmental Center v. Mendocino Cnty., 192 F.3d 1283, 1302 (9th Cir. 1999)
- Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)
- Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993)
- Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546 (1986)
- Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988)
- Caterpillar Inc. v. Lewis, 519 U.S. 61, 67-68 (1996)
- New Alaska Dev. Corp. v. Guetschow, 869 F.2d 1298, 1300-01 (9th Cir. 1989)

- Newby v. Treyled Life Settlements LLC, No. 1:24-CV-00886-JLT-SAB, 2024 WL 5186712, at \*17 (E.D. Cal. Dec. 20, 2024), report and recommendation adopted as modified, 2025 WL 585913 (Feb. 24, 2025)
- Hartmann v. CDCR, 707 F.3d 1114, 1129-30 (9th Cir. 2013)
- Bautista v. Los Angeles Cnty., 216 F.3d 837, 841 (9th Cir. 2000)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-62 (9th Cir. 1992)
- Malone v. U.S. Postal Service, 833 F.2d 128, 130-31 (9th Cir. 1987)
- Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)
- Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
- Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226, 1228 (9th Cir. 2006)
- Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

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