

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PRECEDENTIAL VALUE	unpublished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. 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)

OPINION

Nelson v. Duncan

PER CURIAM.

1 2 3 4

5 UNITED STATES DISTRICT COURT

6 EASTERN DISTRICT OF CALIFORNIA

7 8 LOLITA NELSON, Case No. 1:25-cv-00700-CDB 9 Plaintiff, FINDINGS AND
RECOMMENDATIONS

TO DISMISS ACTION WITH PREJUDICE

10 v. FOR PLAINTIFF’S FAILURE (1) TO STATE

A CLAIM AND (2) TO PROSECUTE AND

11 RAYMOND DUNCAN, et al., TO OBEY COURT ORDERS AND LOCAL
RULES

12 Defendants. (Doc. 3) 13

14-DAY OBJECTION PERIOD

14 Clerk of the Court to Assign District Judge 15 16 Plaintiff Lolita Nelson (“Plaintiff”),
proceeding pro se and in forma pauperis, initiated this 17 action with the filing of a complaint on
June 9, 2025, against Defendants Raymond Duncan, 18 Sanda Moody, D.A. Office/Prosecutor
(“D.A. Office”), Janette Duncan, and Dajion Hill 19 (collectively, “Defendants”). (Doc. 1). 20 On
June 13, 2025, the Court granted Plaintiff’s application to proceed in forma pauperis 21 and
entered the first screening order, finding that the complaint fails to state any cognizable claim 22
against Defendants, fails to establish that this Court may exercise subject matter jurisdiction over
23 the claims, and fails to demonstrate that venue is appropriate in this Court. (Doc 3). Because
the 24 Court found that Plaintiff may be able to cure the identified deficiencies of her complaint,
25 Plaintiff was granted leave to amend her complaint. Id. at 7. Plaintiff was provided 21 days

from 26 entry of the order to file any amended complaint and was forewarned that “[i]f Plaintiff fails to 27 timely comply with this order, the Court will recommend that this action be dismissed for 1 Plaintiff failed to file any amended complaint, and the time to do so has now passed. The 2 Court construes Plaintiff’s failure to file an amended complaint as an expression of her desire to 3 proceed on the complaint as filed and screened. For the reasons set forth below, the undersigned 4 will recommend this action be dismissed for Plaintiff’s failure to state a claim and her failure to 5 obey a court order and to prosecute the action. 6 I. Screening Requirement 7 As Plaintiff was advised in the Court’s screening order (Doc. 3), federal courts must 8 screen in forma pauperis complaints and dismiss any case that is “frivolous or malicious,” “fails 9 to state a claim on which relief may be granted” or seeks monetary relief against an immune 10 defendant. See *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (“[S]ection 11 1915(e) not only permits but requires a district court to dismiss an [IFP] complaint that fails to 12 state a claim.”); see also *id.* at 1129 (“section 1915(e) applies to all in forma pauperis complaints, 13 not just those filed by prisoners.”). 14 A complaint must contain “a short and plain statement of the claim showing that the 15 pleader is entitled to relief...” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 16 required but “[t]hreadbare recitals of the elements of a cause of action, supported by mere 17 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 18 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A complaint may be dismissed as a matter 19 of law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) 20 insufficient facts under a cognizable legal theory. See *Balisteri v. Pacifica Police Dep’t*, 901 F.2d 21 696, 699 (9th Cir. 1990). 22 Pleadings by self-represented litigants are to be liberally construed. See *Haines v. Kerner*, 23 404 U.S. 519, 520-21 (1972). However, “the liberal pleading standard . . . applies only to a 24 plaintiff’s factual allegations,” not his legal theories. *Neitzke v. Williams*, 490 U.S. 319, 330 n .9 25 (1989). Furthermore, “a liberal interpretation of a civil rights complaint may not supply essential 26 elements of the claim that were not initially pled,” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 27 1251, 1257 (9th Cir. 1997) (internal quotation marks & citation omitted), and courts “are not 1 (9th Cir. 2009) (internal quotation marks & citation omitted). 2 II. Plaintiff’s Allegations 3 In the operative complaint, 1 Plaintiff names as Defendants Raymond Duncan, Janette 4 Duncan, Sanda Moody, Daijon Hill, and “D/A Office/Prosecutor” located at the Santa Maria 5 Superior Court. (See Doc. 1). The complaint indicates the basis for federal court jurisdiction is 6 federal question. *Id.* at 3. Plaintiff seeks a jury to decide the amount-in-controversy. *Id.* at 4. 7 The complaint is signed and dated June 3, 2025. *Id.* at 5. 8 Plaintiff appears to allege that Defendants sent her “money to foreign countries to each 9 from [her] benefits, us[ed her] identity,” committed mail fraud, bought houses, cars, and acquired 10 business in her name and all Defendants “authorize[d] abuse of power and conspiracy[,] 11 tormenting [her.]” *Id.* at 3. Plaintiff alleges that Defendant Hill conspired with Defendant 12 Raymond Duncan and his wife, Defendant Janette Duncan. *Id.* at 4. Plaintiff further alleges that 13 “tenants were set up and frame, double jeopardy behind fal[s]e allegations, having [Plaintiff] put 14 on the

streets, when [she] was supporting Mr. Eugene Allen health issue.” Id. 15 III. Discussion 16 A. Failure to File a First Amended Complaint 17 Plaintiff failed to file a first amended complaint following the Court’s issuance of its first 18 screening order granting leave to amend. (See Doc. 3). The undersigned construes Plaintiff’s 19 failure to file a first amended complaint as an expression of her desire to proceed on the 20 complaint as filed. Thus, the undersigned will recommend that the complaint be dismissed for 21 failure to state a cognizable claim and for failure to obey a court order and to prosecute as set 22 forth below. 23 B. Failure to State a Claim under Rule 8 24 Plaintiff’s complaint fails to comply with Rule 8 of the Federal Rule of Civil Procedure, 25 fails to state a cognizable claim, fails to demonstrate that venue is proper in this Court, and cites 26 no statutory authority nor any other applicable source of law from which her claims are raised. 27 1 The undersigned accepts Plaintiff’s allegations in the complaint as true only for the 1 The complaint does not clearly state what happened, when or where it happened, or the 2 involvement of any of the named Defendants. Plaintiff’s allegations must be based on facts as to 3 what happened, to include identifying the alleged wrongful acts of each of the Defendants that 4 led to the violation of Plaintiff’s rights. The only facts asserted—that she was “put on the 5 streets” when she was helping a non-party individual based on a purported conspiracy of 6 Defendants—are deficient and conclusory such that it does not provide Defendants fair notice of 7 the claims and grounds supporting them. *Swierkiewicz*, 534 U.S. at 513; *Iqbal*, 556 U.S. at 678 8 (“[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory 9 statements, do not suffice.”). 10 In the section of the complaint prompting her to identify the federal statutes or other basis 11 for federal question jurisdiction, Plaintiff alleges that one or more defendants misappropriated 12 her identity and committed “mail fraud.” These are criminal offenses. Plaintiff, as a private 13 individual, cannot pursue claims against Defendants under criminal statutes. See. e.g., *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (holding specific criminal provisions in the United 15 States Code “provide no basis for civil liability”); *Clinton v. Allison*, No. 3:23-cv-01471-CAB- 16 SBC, 2024 WL 1859956, at *10 (S.D. Cal. Apr. 29, 2024) (discussing plaintiff’s references to 17 federal and state criminal statutes and finding “criminal statutes do not give rise to civil liability 18 under section 1983”); *Jones v. Cnty. of Sonoma*, No. 23-cv-02730-CRB, 2024 WL 1354496, at 19 *4 (N.D. Cal. Mar. 29, 2024) (finding plaintiff “fails to state a claim under 18 U.S.C. § 1503 20 because the statute only applies to criminal cases and does not provide a civil cause of action”); 21 *Bland v. Gross*, No. 1:20-cv-00542-DAD-BAM (PC), 2021 WL 120964, at *1 (E.D. Cal. Jan. 13, 22 2021) (“Title 18 of the United States Code is a criminal statute and does not provide individual 23 plaintiffs with a private cause of action.”) (quotation and citation omitted). 24 As to Plaintiff’s vague reference to “conspiracy [to] torment[]” her (Doc. 1 at 3, 4), “[a] 25 civil conspiracy is a combination of two or more persons who, by some concerted action, intend 26 to accomplish some unlawful objective for the purpose of harming another, which results in 27 damage.” *Washington v. Thuston*, No. 1:24-cv-00254-HBK, 2024 WL 1722418, at *4 (E.D. Cal. 1 prove a civil conspiracy, the plaintiff must

show that the conspiring parties reached a unity of 2 purpose or common design and understanding, or a meeting of the minds in an unlawful 3 agreement.” Id. 4 Here, the complaint’s conclusory allegations of a purported conspiracy of Defendants, 5 without factual support, are insufficient to state a conspiracy claim. See *Burns v. Cnty. of King*, 6 883 F.2d 819, 821 (9th Cir. 1989) (per curiam). Plaintiff was admonished in the first screening 7 order that should she seek to assert a viable conspiracy claim in a first amended complaint, an 8 “agreement or meeting of the minds to violate [her] constitutional rights must be shown[.]” 9 *Woodrum v. Woodward Cnty.*, 866 F.2d 1121, 1126 (9th Cir. 1989); see *Mendocino 10 Environmental Center v. Mendocino Cnty.*, 192 F.3d 1283, 1302 (9th Cir. 1999) (“[A]n 11 agreement need not be overt, and may be inferred on the basis of circumstantial evidence such as 12 the actions of the defendants.”). 13 Plaintiff was provided the opportunity to amend her complaint to correct these identified 14 deficiencies. Because she failed to file a first amended complaint and the time to do so has 15 passed, the undersigned recommends the complaint be dismissed for failure to state a claim. 16 C. Subject Matter Jurisdiction 17 Federal courts are courts of limited jurisdiction and may hear only those cases authorized 18 by federal law. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). 19 Jurisdiction is a threshold inquiry, and “[f]ederal courts are presumed to lack jurisdiction, ‘unless 20 the contrary appears affirmatively from the record.’” *Casey v. Lewis*, 4 F.3d 1516, 1519 (9th Cir. 21 1993) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 (1986)). Without 22 jurisdiction, the district court cannot decide the merits of a case or order any relief and must 23 dismiss the case. See *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 24 F.2d 1376, 1380 (9th Cir. 1988). A federal court’s jurisdiction may be established in one of two 25 ways: actions arising under federal law or those between citizens of different states in which the 26 alleged damages exceed \$75,000. 28 U.S.C. §§ 1331, 1332. “Subject-matter jurisdiction can 27 never be waived or forfeited,” and “courts are obligated to consider sua sponte” subject matter

1 Under 28 U.S.C. § 1332, a district court has original jurisdiction of a civil action where
2 the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, 3
and the dispute is between “citizens of different states.” Section 1332 requires complete diversity,
4 i.e., that “the citizenship of each plaintiff is diverse from the citizenship of each defendant.” 5
Caterpillar Inc. v. Lewis, 519 U.S. 61, 67-68 (1996). A corporation is “a citizen of every State 6
and foreign state by which it has been incorporated and of the State or foreign state where it has 7
its principal place of business.” See 28 U.S.C. § 1332(a)(1); *New Alaska Dev. Corp. v. 8*
Guetschow, 869 F.2d 1298, 1300-01 (9th Cir. 1989). 9 Here, although the complaint asserts that
the Court has federal question jurisdiction over 10 this action (Doc. 1 at 3), as set forth above, the
complaint fails to identify any federal cause of 11 action such that it appears the Court lacks
federal question jurisdiction over the matter. 12 Furthermore, the complaint does not identify an
amount-in-controversy or make clear whether the 13 parties in this action are diverse. Thus, it
appears the Court may lack a basis to properly exercise 14 subject matter jurisdiction over this

action. Plaintiff was afforded an opportunity to identify a 15 federal basis for jurisdiction for which her claims may properly be asserted or show that diversity 16 jurisdiction exists here by alleging a sufficient amount-in-controversy (i.e., more than \$75,000) 17 and that there is complete diversity between Plaintiff and each of the named Defendants. 18 However, because Plaintiff failed to file an amended complaint correcting the jurisdictional 19 deficiency, the undersigned finds that it does not have subject matter jurisdiction over this action. 20 Relatedly, although Plaintiff does not allege where the conduct of Defendants that resulted 21 in her injuries took place, the Court takes note that one of the named defendants is a prosecutor in 22 the area of Superior Court of Santa Maria. See (Doc. 1 at 2). Venue in this action is governed by 23 28 U.S.C. § 1391, which provides in relevant part: 24 A civil action may be brought in—(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; 25

(2) a judicial district in which a substantial part of the events or omissions giving 26 rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise 27 be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action. 1 28 U.S.C. § 1391(b). 2 Venue may be proper in multiple districts if “a substantial part of the events or omission 3 giving rise to the claim” took place in each district. *Newby v. Treyled Life Settlements LLC*, No. 4 1:24-CV-00886-JLT-SAB, 2024 WL 5186712, at *17 (E.D. Cal. Dec. 20, 2024), report and 5 recommendation adopted as modified, 2025 WL 585913 (Feb. 24, 2025). Though section 1391 6 does not require that a majority of events have occurred within the district where the action is 7 filed, “significant events or omissions material to the plaintiff’s claim must have occurred in the 8 district in question, even if other material events occurred elsewhere.” *Id.* 9 The complaint asserts no facts permitting the Court to conclude that significant events or 10 omissions material to the Plaintiff’s claims occurred in the Eastern District of California such that 11 venue would be proper in this Court. 12 D. Leave to Amend is Futile 13 Plaintiff was provided an opportunity to remedy her pleadings to comport with Rule 8’s 14 requirements, correct the identified deficiencies, state a proper basis for subject matter 15 jurisdiction, and show the Court that venue is otherwise proper in this Court. Plaintiff has failed 16 to file an amended complaint correcting the noted deficiencies. Accordingly, the undersigned 17 assesses that leave to amend would be futile. See *Hartman v. CDCR*, 707 F.3d 1114, 1129-30 18 (9th Cir. 2013); e.g., *Smith v. Dyer*, No. 1:24-cv-01288-JLT-EPG, 2024 WL 4894724, at *4 19 (E.D. Cal. Nov. 26, 2024) (recommending complaint be dismissed without leave to amend for 20 failure to comply with Rule 8 and lack of subject matter jurisdiction), report and 21 recommendation adopted, 2025 WL 50623 (Jan. 8, 2025). 22 E. Failure to Obey Court Orders and Failure to Prosecute 23 Apart from Plaintiff’s failure to state a claim upon which relief may be granted, she has 24 failed to comply with this Court’s order to file an amended complaint and, as such, has failed to 25 prosecute this action. Accordingly, the undersigned will recommend

Plaintiff's complaint be 26 dismissed on this separate, independent ground. 27 1. Governing Authority 1 "[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may 2 be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of 3 the Court." E.D. Cal. Local Rule 110. The Court has the inherent power to control its docket and 4 may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the 5 action. *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 841 (9th Cir. 2000). A court may dismiss an 6 action based on a party's failure to prosecute an action, obey a court order, or comply with local 7 rules. See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure 8 to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 9 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 10 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local 11 rules). 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, 1440-41 (9th Cir. 1988) (internal quotation marks & 17 citation omitted). These factors guide a court in deciding what to do and are not conditions that 18 must be met in order for a court to take action. In *re Phenylpropanolamine (PPA) Products 19 Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted). 20 2. Analysis 21 Here, Plaintiff has failed to comply with the Court's orders and Local Rules. Plaintiff has 22 filed no response to the Court's first screening order granting leave to amend her complaint and 23 the time to do so has passed. There are no other reasonable alternatives available to address 24 Plaintiff's failure to respond and otherwise obey this Court's orders. Thus, the first and second 25 factors—the expeditious resolution of litigation and the Court's need to manage its docket— 26 weigh in favor of dismissal. *Carey*, 856 F.2d at 1440. 27 The third factor, risk of prejudice to Defendants, also weighs fairly in favor of dismissal 1 action. See *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). This matter cannot proceed 2 further without Plaintiff's participation to prosecute the case and file an amended complaint 3 curing the deficiencies identified in the Court's first screening order. The presumption of injury 4 holds given Plaintiff's unreasonable delay in prosecuting this action. Thus, the third factor—a 5 risk of prejudice to the Defendants—also weighs in favor of dismissal. *Carey*, 856 F.2d at 1440. 6 The fourth factor usually weighs against dismissal because public policy favors 7 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, 8 "this factor lends little support to a party whose responsibility it is to move a case toward 9 disposition on the merits but whose conduct impedes progress in that direction." In *re PPA*, 460 10 F.3d at 1228. Plaintiff has not moved this case forward toward disposition on the merits. She has 11 instead failed to comply with this Court's orders and the Local Rules and, thus, is impeding the 12 progress of this action. Therefore, the fourth factor—the public policy favoring disposition of

13 cases on their merits—also weighs in favor of dismissal. Carey, 856 F.2d at 1440. 14 Finally, the Court’s warning to a party that failure to obey the court’s order will result in 15 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262. 16 Here, the Court’s order granting Plaintiff leave to amend and requiring a response from Plaintiff 17 cautioned: “If Plaintiff fails to timely comply with this order, the Court will recommend that 18 this action be dismissed for failure to state a claim, failure to obey a court order and/or 19 failure to prosecute.” (Doc. 3 at 8). Plaintiff was adequately forewarned that the failure to 20 timely file an amended complaint could result in terminating sanctions. 21 IV. Conclusion, Order, and Recommendation 22 For the foregoing reasons, the Court DIRECTS the Clerk of the Court to assign a district 23 judge to this action and RECOMMENDS that: 24 1. The Court DISMISS this action with prejudice for Plaintiff’s failure to state a claim upon 25 which relief may be granted and futility of further amendment, or in the alternative, 26 without prejudice for her failure to prosecute this action and to comply with the Court’s 27 orders and Local Rules. See Local Rule 110; and 1 These Findings and Recommendations will be submitted to the United States District 2 | Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(7). Within 14 days 3 | after being served with a copy of these Findings and Recommendations, a party may file written 4 | objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to 5 | Magistrate Judge’s Findings and Recommendations” and shall not exceed 15 pages without 6 | leave of Court and good cause shown. The Court will not consider exhibits attached to the 7 | Objections, but a party may refer to exhibits in the record by CM/ECF document and page 8 | number. Any pages filed in excess of the 15-page limitation may be disregarded by the District 9 | Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 636(b)(7)(C). A 10 | party’s failure to file any objections within the specified time may result in the waiver of certain 11 | rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). 12 | Tr Is SO ORDERED. 13 | }) Bo Dated: _ July 15, 2025
14 UNITED STATES MAGISTRATE JUDGE
15 16 17 18 19 20 21 22 23 24 25 26 27 28 10