

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Elijah Lee Miller v. Andrew Montgomery

Miller · No. 2:23-CV-0994-KJM-DMC-P · Decided August 4, 2025

OPINION

1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN
DISTRICT OF CALIFORNIA 10 11 ELIJAH LEE MILLER, No. 2:23-CV-0994-KJM-DMC-P 12
Plaintiff, 13 v. ORDER 14 ANDREW MONTGOMERY, 15 Defendant. 16 17 Plaintiff, a prisoner
proceeding pro se, brings this civil rights action under 42 U.S.C. 18 § 1983.

The matter was referred to a United States Magistrate Judge as provided by Eastern 19 District of
California local rules. 20 On April 24, 2025, the Magistrate Judge filed findings and
recommendations, which were 21 served on the parties, and which contained notice that the
parties may file objections within the 22 time specified therein. Timely objections to the findings
and recommendations have been filed.

23 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304(f), this 24
Court has conducted a de novo review of this case. Having reviewed the file, the court finds the 25
findings and recommendations to be supported by the record.

The court writes separately to 26 clarify its reasons for adopting the recommendation to impose
dismissal as a sanction. ECF 27 No. 27. 28 //// 1 “Dismissal is a harsh penalty and is to be
imposed only in extreme circumstances.” 2 Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
1986) (citing Raiford v. Pounds, 640 F.2d 3 944, 945 (9th Cir. 1981)).

Before acting, the court must weight five factors to determine if 4 dismissal is an appropriate
sanction: “(1) the public interest; (2) the court’s need to manage the 5 docket; (3) the risk of
prejudice to the defendant; (4) the public policy favoring disposition of 6 cases on their merits;
and (5) the availability of less drastic alternatives.” Bautista v. Los Angeles 7 Cnty., 216 F.3d 837,
841 (9th Cir.

2000) (citation omitted). “The Ninth Circuit ‘may affirm a 8 dismissal where at least four factors
support dismissal,... or where at least three factors 9 “strongly” support dismissal.’” Stone v. City
of Tucson, 249 F.R.D. 326, 327 (D. Ariz. 2008) 10 (citations omitted). 11 Here, the first and
second factors weigh in favor of dismissal. “[T]he public’s interest in 12 expeditious resolution of
litigation” strongly favors dismissal.

Yourish v. California Amplifier, 13 191 F.3d 983, 990 (9th Cir. 1999). The court’s need to manage
the docket also strongly favors 14 dismissal due to the high caseload in the Eastern District of

California and the many other cases¹⁵ requiring the court's attention. The third factor, risk of prejudice to the defendant, weighs in favor of dismissal.¹⁷ "Whether prejudice is sufficient to support an order of dismissal is in part judged with reference¹⁸ to the strength of the plaintiff's excuse for the default." *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 131 (9th Cir.

1987). The plaintiff's objections do not directly address her failure to pay the²⁰ filing fee within thirty days of the January 30, 2025, order. As of July 29, 2025, the fee is¹⁸⁰ ²¹ calendar days overdue. Because "[u]nreasonable delay creates a presumption of injury to the²² defense," this factor weighs in favor of dismissal. See *Henderson*, 779 F.2d at 1423.

The fourth factor weighs strongly against dismissal, especially in civil rights cases.²⁴ *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998). Finally, the fifth factor also²⁵ weighs in favor of dismissal. "In cases involving sua sponte dismissal of an action, rather than²⁶ dismissal following a noticed motion under Rule 41(b), Fed. R. Civ.

P., there is a closer focus on' ²⁷ the considerations of less drastic alternatives and warning to the party." *Stone*, 249 F.R.D. at 327 ²⁸ (quoting *Oliva v. Sullivan*, 958 F.2d 272, 274 (9th Cir. 1992)). The court has considered less ¹ | drastic alternatives when a plaintiff has been warned that failure to obey a court order will result ² | in dismissal. *Malone*, 833 F.2d at 132-33.

Here, the findings and recommendations put plaintiff ³ || □□ notice that her case was at risk of dismissal. Moreover, failure to follow local rules may be ⁴ | grounds for dismissal. *Ghazali v. Moran*, 36 F.3d 52, 53 (9th Cir. 1995). This Court's Local ⁵ || Rule 110 indicates that "[f]ailure... of a party to comply... with any order of the Court may be ⁶ || grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or ⁷ || within the inherent power of the Court." Additionally, there are few options left for the court to ⁸ | pursue.

Given the plaintiffs failure to pay the filing fee, it appears that monetary sanctions are of ⁹ || little use. The recommended sanction, dismissal without prejudice, is less drastic than dismissal ¹⁰ | with prejudice.

For these reasons, the fifth factor weighs in favor of dismissal.¹¹ Because four factors weigh in favor of dismissal, and considering all the relevant ¹² || circumstances, the court adopts the findings and recommendations, ECF No. 27, in full.¹³ Accordingly, IT IS HEREBY ORDERED as follows:¹⁴ ¹.

The findings and recommendations filed April 24, 2025, ECF No. 27, are adopted ¹⁵ || in full.¹⁶ ². This action is dismissed without prejudice for lack of prosecution and failure to ¹⁷ || comply with court rules and orders.¹⁸ ³.

The Clerk of the Court is directed to enter judgment and close this file.¹⁹ | DATED: August 1, 2025. ²¹ □ STATES DISTRICT JUDGE ²² ²³ ²⁴ ²⁵ ²⁶ ²⁷ ²⁸

