

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

Geovanni Pena v. United States, et al.

Pena · No. 1:21-cv-00833-JLT-SKO · Decided December 3, 2025

OPINION

Geovanni Pena v. United States, et al.

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 GEOVANNI PENA, Case No.: 1:21-cv-00833-JLT-SKO 12 Plaintiff, FINDINGS AND
RECOMMENDATIONS

TO DISMISS ACTION WITHOUT

13 v. PREJUDICE FOR PLAINTIFF’S

CONTINUED FAILURE TO OBEY LOCAL

14 UNITED STATES, et al., RULES AND FAILURE TO PROSECUTE

15 Defendants. 14-DAY OBJECTION DEADLINE

16 17 Plaintiff Geovanni Pena is appearing pro se and in forma pauperis in this civil rights 18
action pursuant to 42 U.S.C. section 1983.

19 I. RELEVANT BACKGROUND

20 On August 6, 2025, previously assigned Magistrate Judge Gary S. Austin issued an Order 21
Withdrawing Findings and Recommendations. (Doc. 25.) Judge Austin vacated the March 20, 22
2025, recommendation that this action be dismissed for Plaintiff’s failure to keep the Court 23
apprised of his current address because Plaintiff responded to District Judge Thurston’s April 21,
24 2025, order requiring him to file a response. (Id. at 1-3.) 25 On October 6, 2025, this action
was reassigned from Magistrate Judge Austin to the 26 undersigned. (Doc. 26.) The order was
served on Plaintiff to his address of record that same date. 27 On October 24, 2025, the
reassignment order was returned by the United States Postal

1 II. DISCUSSION

2 Plaintiff has again failed to keep the Court apprised of his current address. Therefore, the 3
undersigned will recommend this action be dismissed without prejudice. 4 Applicable Legal
Standards 5 The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide, 6
“[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may 7
be grounds for the imposition by the Court of any and all sanctions authorized by statute or Rule 8
or within the inherent power of the Court.” Local Rule 110. “District courts have inherent power 9

to control their dockets” and, in exercising that power, may impose sanctions, including dismissal of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). 11 A court may dismiss an action based on a party’s failure to prosecute an action, obey a court 12 order, or comply with local rules. See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 13 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. 14 Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court 15 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to 16 prosecute and to comply with local rules). 17 Local Rule 182(f) provides that a “pro se party is under a continuing duty to notify the 18 Clerk and all other parties of any change of address Absent such notice, service of documents 19 at the prior address of the ... pro se party shall be fully effective.” Further, Local Rule 183(b) 20 states that a “party appearing in propria persona shall keep the Court and opposing parties advised 21 as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is 22 returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing 23 parties within thirty (30) days thereafter of a current address, the Court may dismiss the action 24 without prejudice for failure to prosecute.” (Emphasis omitted.) 25 “In determining whether to dismiss an action for lack of prosecution, the district court is 26 required to weigh several factors: (1) the public’s interest in expeditious resolution of litigation; 27 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public 1 sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks & 2 citation omitted). These factors guide a court in deciding what to do and are not conditions that 3 must be met in order for a court to take action. In *re Phenylpropanolamine (PPA) Products 4 Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted). 5 Analysis 6 Plaintiff has failed to file a notice of change of address or to otherwise advise the Court of 7 his current address. As noted above, according to the Court’s docket, Plaintiff’s address of record

8 is “FCI YAZOO CITY-MEDIUM, 2225 HALEY BARBOUR PARKWAY, YAZOO CITY, MS 9 39194.” All orders issued by the Court since April 21, 2025, have been served at that address.1 On

10 October 24, 2025, mail directed to Plaintiff was returned to the Court marked “Undeliverable” 11 and no forwarding address was provided. Because Plaintiff has failed keep the Court apprised of 12 his current address, this action is subject to dismissal. Significantly, the undersigned notes 13 Plaintiff has repeatedly been informed of his obligation to keep the Court apprised of his current 14 address and his obligation to obey court orders and Local Rules. (See Docs. 2 [first informational 15 order], 12 [recommending dismissal for failure to obey court orders], 18 [minute order directing 16 Plaintiff to “file a ‘Notice of Current Address’”], 19 [order directing Plaintiff to show cause why 17 case should not be dismissed or to file verification of current address], & 20 [recommending 18 dismissal for failure to obey court order].) Plaintiff previously recognized his obligation to the 19 Court by notifying it of a change of address on May 23, 2022. (See Doc. 13.)

20 Despite the Court's repeated orders, Plaintiff has again failed to obey this Court's Local 21
Rules. Given the Court's present inability to communicate with Plaintiff, coupled with Plaintiff's
22 repeated failures to keep the Court apprised of his current address and to obey court orders and
23 this Court's Local Rules, the undersigned finds there are no other reasonable alternatives 24
available to address Plaintiff's failure to obey the Local Rules and failure to prosecute. Thus, the
25 first and second factors — the expeditious resolution of litigation and the Court's need to
manage 26 its docket — weigh in favor of dismissal. *Carey*, 856 F.2d at 1440; *Henderson*, 779
F.2d at 1424. 27 1 Plaintiff's address was updated by District Judge Thurston following a search
of the Bureau of Prison's inmate 1 The third factor, risk of prejudice to defendant, also weighs
fairly in favor of dismissal 2 since a presumption of injury arises from the occurrence of
unreasonable delay in prosecuting an 3 action. See *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir.
1976). Here, while Plaintiff's first 4 amended complaint had not yet been screened and no
defendant has appeared,² these proceedings 5 are essentially at a standstill because of Plaintiff's
failure to keep the Court apprised of his current 6 address. Plaintiff has unreasonably delayed the
prosecution of this action since at least October 7 24, 2025, when mail directed to Plaintiff was
returned to the Court as undeliverable. Thus, the 8 third factor also weighs in favor of dismissal.
Carey, 856 F.2d at 1440-41. 9 The fourth factor usually weighs against dismissal because public
policy favors 10 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir.
2002). However, 11 "this factor lends little support to a party whose responsibility it is to move a
case toward 12 disposition on the merits but whose conduct impedes progress in that direction." In
re PPA, 460 13 F.3d at 1228. Plaintiff has not moved this case forward toward disposition on the
merits. It is his 14 responsibility to do so. Instead, Plaintiff has stopped communicating with the
Court altogether 15 and has failed to comply with this Court's Local Rules. More than 30 days
have passed³ since the 16 USPS returned the order issued October 6, 2025, yet Plaintiff has failed
to file a notice of change 17 of address in compliance with Local Rule 183(b). Additionally, as
reflected on the docket for this 18 action, Plaintiff continues to ignore his continuing obligation to
keep the Court apprised of his 19 current address. Therefore, the fourth factor, the public policy
favoring disposition of cases on 20 their merits, also weighs in favor of dismissal. *Carey*, 856 F.2d
at 1440. 21 Finally, the Court's warning to a party that failure to obey the court's orders will result
in 22 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at
1262. 23 Here, in the First Informational Order in Prisoner/Civil Detainee Civil Rights Case
issued May 24 25, 2021, Plaintiff was advised as follows: "In litigating this action, the parties
must comply with 25 26 2 The undersigned recognizes the significant delay concerning screening
of Plaintiff's operative complaint as reflected in Judge Thurston's April 21, 2025, order. (See Doc.
21 at 2.) In the event Judge Thurston 27 does not adopt these findings and recommendations,
Plaintiff's first amended complaint will be screened. 3 12/2/2025 – 10/24/2025 = 39 days. 1 this
Order, the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), and the Local Rules of the 2
United States District Court, Eastern District of California ("Local Rules"), as modified by this 3

Order. Failure to so comply will be grounds for imposition of sanctions which may include 4 dismissal of the case. Local Rule 110; Fed. R. Civ. P. 41(b).” (See Doc. 2 at 1.) That Order further 5 advised: “A pro se plaintiff must keep the Court and opposing parties informed of the party’s 6 correct current address. Local Rule 182(f). If a party moves to a different address without filing 7 and serving a notice of change of address, documents served at a party’s old address of record 8 shall be deemed received even if not actually received. ... If mail directed to a pro se plaintiff at 9 the address of record is returned by the United States Postal Service as undeliverable, the order 10 will not be re-served a second time absent a notice of change of address. If a pro se plaintiff’s 11 address is not updated within sixty-three (63) days of mail being returned as undeliverable, the 12 case will be dismissed for failure to prosecute.” (Id. at 5.)⁴ As of January 1, 2025, Local Rule 13 183(b) provides that a change of address must be filed within 30 days.⁵ 14 As set forth above, the undersigned finds that Plaintiff had more than adequate warning 15 that dismissal could result from his noncompliance with this Court’s Local Rules or failure to 16 update his address. Thus, the fifth factor, the availability of less drastic sanctions, weighs in favor 17 of dismissal. *Ferdik*, 963 F.2d at 1262; *Carey*, 856 F.2d at 1440. 18 In sum, Plaintiff has again failed to comply with this Court’s Local Rules, and in doing so, 19 has failed to prosecute this action. Having weighed the equities⁶ and considered the foregoing 20 factors, the undersigned concludes that dismissal of this action is warranted given Plaintiff’s 21 4 A blank “Notice of Change of Address” form was also provided for Plaintiff’s use. (See Doc. 2 at 7.) 22 5 The Local Rules state: “These Local Rules are effective on December 1, 2009, and shall govern all actions then pending or commenced thereafter.” See Local Rule 100(e). Further, the Local Rules provide: 23 “Immediately upon the adoption of these Rules or any change in these Rules, copies of the new and revised Rules shall be provided to such publications and persons as the Chief Judge deems appropriate. 24 The Clerk shall promptly notify the Judicial Council and the Administrative Office of the United States 25 Courts Copies shall be distributed in a manner calculated to ensure maximum notification to those practicing in the Eastern District of California. A notice shall be posted prominently in the Clerk’s Offices 26 and on the Court’s website.” See Local Rule 102(c), italics added. 27 6 Judge Thurston previously found a less drastic sanction was warranted given the circumstances that existed on April 21, 2025, and warned Plaintiff on that occasion that a failure to timely respond to her order would result in a dismissal of the action. (See Doc. 21 at 3.) 1 repeated and continued failures to keep the Court apprised of his current address.

2 III. CONCLUSION AND RECOMMENDATION

3 Based on the foregoing, the Court HEREBY ORDERS the Clerk of the Court to serve 4 these Findings and Recommendations as follows: (1) to Plaintiff’s address of record on file with 5 the Court, and (2) to Plaintiff at the United States Penitentiary, Big Sandy, in Inez, Kentucky.⁷ 6 Further, for the reasons stated above, the Court HEREBY RECOMMENDS that this 7 action be dismissed, without prejudice, based on Plaintiff’s failure to obey the Local Rules and to 8 prosecute this action. 9 These Findings and Recommendations will be submitted to the United

States District 10 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 11 after being served with a copy of these Findings and Recommendations, a party may file written 12 objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to 13 Magistrate Judge’s Findings and Recommendations” and shall not exceed fifteen (15) pages 14 without leave of Court and good cause shown. The Court will not consider exhibits attached to 15 the Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference 16 the exhibit in the record by its CM/ECF document and page number, when possible, or otherwise 17 reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page limitation 18 may be disregarded by the District Judge when reviewing these Findings and Recommendations 19 under 28 U.S.C. § 636(b)(1)(C). A party’s failure to file any objections within the specified time 20 may result in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th 21 Cir. 2014).

22 IT IS SO ORDERED. 23

24 Dated: December 2, 2025 /s/ Sheila K. Oberto .

UNITED STATES MAGISTRATE JUDGE

25 26 27 7 See https://www.bop.gov/mobile/find_inmate/byname.jsp#inmate_results [Geovanni Pena], as of December 2, 2025.