

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

Toepfer v. City of Vallejo

Toepfer · No. 2:24-cv-02366-KJM-CSK · Decided April 23, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ROBERT TOEPFER, et al., Case No. 2:24-cv-02366-KJM-CSK 12
Plaintiffs, FINDINGS AND RECOMMENDATIONS TO DISMISS FOR FAILURE TO 13 v.
PROSECUTE 14 CITY OF VALLEJO, et al., 15 Defendants. 16 17 Plaintiffs Robert Toepfer,
Shawn O'Malley, Joan Alford, James Nelson, Pam 18 Nelson, Cassandra Salinas, and Michael L.
Mardell, proceeding without counsel, filed 19 this action on August 30, 2024.¹ (ECF No. 1.)

On October 7, 2024, the undersigned 20 issued Findings and Recommendations to deny Plaintiffs'
Motion for Temporary 21 Restraining Order and Preliminary Injunction (ECF No. 3) and
dismissing Plaintiff's 22 Complaint (ECF No. 1) without prejudice. (ECF No. 22.)

On December 6, 2024, the 23 District Judge adopted the Findings and Recommendations in full,
denying Plaintiffs' 24 Motion for Temporary Restraining Order and Preliminary Injunction and
dismissing 25 Plaintiffs' Complaint with leave to amend, and directing Plaintiffs to file an
amended 26 complaint within thirty (30) days of the date of the order. (ECF No. 23.)

Plaintiffs failed to 27 1 This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636,
Fed. R. 28 Civ. P. 72, and Local Rule 302(c)(21). 1 file an amended complaint within the applicable
deadline. As of April 21, 2025, Plaintiffs 2 have still not filed an amended complaint. 3 In
addition, on October 9, 2024, October 15, 2024, October 16, 2024, October 17, 4 2024, October
21, 2024, October 22, 2024, November 4, 2024, December 26, 2024, 5 January 6, 2025, and
February 21, 2025, mail was returned as undeliverable for certain 6 plaintiffs.

See Docket. On February 28, 2025, the Court issued an order to show cause 7 ordering Plaintiffs
to respond and file an amended complaint and provide current 8 addresses for Plaintiffs Shawn
O'Malley, Joan Alford, James Nelson, Pam Nelson, 9 Cassandra Salinas, and Michael L. Mardell
within twenty-one (21) days from the date of 10 the order. (ECF No. 24.)

The Court's February 28, 2025 order was also returned as 11 undeliverable for Plaintiffs Shawn
O'Malley and Joan Alford on March 12, 2025, and for 12 Plaintiff Cassandra Salinas on March
13, 2025. See Docket. To date, Plaintiffs have not 13 responded to the Court's orders, have not
filed an amended complaint, and have not 14 provided a current address for Plaintiffs Shawn
O'Malley, Joan Alford, and Cassandra 15 Salinas.

16 I. LEGAL STANDARDS 17 Under Federal Rule of Civil Procedure 41, a court may dismiss an action for 18 failure to prosecute or failure to comply with the Federal Rules of Civil Procedure, the 19 Court's local rules, or any order of the court. Fed. R. Civ. P. 41(b); see also *Ghazali v. 20 Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (approving dismissal under Rule 41(b) for a party's 21 failure to follow the district court's local rules).

This Court's Local Rules are in accord. 22 See E.D. Cal. Local Rule 110 ("Failure of counsel or of a party to comply with these 23 Rules or with any order of the Court may be grounds for imposition by the Court of any 24 and all sanctions authorized by statute or Rule or within the inherent power of the 25 Court."); E.D. Cal. Local Rule 183(a) (providing that a pro se party's failure to comply 26 with the federal rules, local rules, or other applicable law may support dismissal of that 27 party's action).

The court may act on its own accord in exercising this authority. *Hells 28 Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) 1 (approving sua sponte dismissals under Rule 41(b)). 2 The Ninth Circuit has found the following factors relevant in determining whether a 3 case should be dismissed with prejudice under Rule 41(b): (1) the public's interest in expeditious resolution of litigation; 4 (2) the court's need to manage its docket; 5 (3) the risk of prejudice to the defendant(s); (4) merits the availability of less drastic alternatives; and 6 (5) the public policy favoring disposition of cases on their.

7 *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019). 8 II. DISCUSSION 9 Applying the factors for involuntary dismissal, the Court finds this action should be 10 dismissed. See *Applied Underwriters*, 913 F.3d at 890.

The first two factors weigh in 11 favor of dismissal because the public has a strong interest in expeditious resolution of 12 litigation, and Plaintiffs have failed to take the steps necessary to move this case 13 forward.

In addition, this district court in particular has a strong need and interest in 14 managing its docket given the extremely high caseload in the Eastern District of 15 California. While the risk of prejudice to Defendants is somewhat minimal, there is some 16 prejudice given the impact on resources of stale litigation. 17 As to the fourth factor, the Court has already tried less drastic alternatives.

18 Specifically, the Court has extended Plaintiffs' deadline to file their amended complaint 19 without any response from Plaintiffs, leaving the Court with little alternative but to 20 recommend dismissal. In addition, the Court's mail has been returned as undeliverable 21 on multiple occasions, and not all Plaintiffs have informed the Court of their change of 22 address.

See E.D. Cal. Local Rule 182(f) (imputing a duty on parties to notify the court 23 and parties of any change of address). 24 Finally, as to the public policy favoring disposition of cases on their

merits, that 25 factor is outweighed here. Unfortunately, Plaintiffs' failure to prosecute the case and 26 comply with the rules preclude a resolution on the merits.

27 Therefore, after careful consideration, the Court concludes dismissal with 28 prejudice for failure to prosecute is appropriate. See *Hells Canyon*, 403 F.3d at 689 1 | (approving court's sua sponte dismissal under Rule 41(b) for a plaintiff's failure to 2 || prosecute or comply with the Federal Rules of Civil Procedure or the court's orders). 3 | Ill. CONCLUSION 4 Accordingly, IT |S HEREBY RECOMMENDED that: 5 1.

Plaintiffs' action be DISMISSED with prejudice; and 6 2. The Clerk of Court be directed to CLOSE this case. 7 | These findings and recommendations are submitted to the United States District Judge 8 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 9 | after being served with these findings and recommendations, any party may file written 10 | objections with the Court and serve a copy on all parties.

This document should be 11 | captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply 12 || to the objections shall be served on all parties and filed with the Court within 14 days 13 | after service of the objections. Failure to file objections within the specified time may 14 | waive the right to appeal the District Court's order.

Turner v. Duncan, 158 F.3d 449, 455 15 | (9th Cir. 1998); *Martinez v. Yist*, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 16 17 | Dated: April 22, 2025 Cc (i s ☐☐ 18 CHI SOO KIM 49 UNITED STATES MAGISTRATE JUDGE 20 || 4, toep2366.24 21 22 23 24 25 26 27 28