

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Damen D. Rabb v. California Department of Correction &
Rehabilitation, et al.**

Rabb v. California Department of Correction & Rehabilitation · No. 1:23-cv-01381-HBK (PC) · Decided
December 15, 2025

SUMMARY

The document contains a magistrate judge’s findings and recommendations in a prisoner civil rights action under 42 U.S.C. § 1983. The court recommends dismissing the action without prejudice under Federal Rule of Civil Procedure 41(b) and Eastern District of California Local Rule 110 because the plaintiff failed to comply with a screening order and failed to prosecute.

OPINION

Damen D. Rabb v. California Department of Correction & Rehabilitation, et al.
PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 DAMEN D. RABB, Case No. 1:23-cv-01381-HBK (PC) 12 Plaintiff, ORDER TO ASSIGN
A DISTRICT JUDGE 13 v.

FINDINGS AND RECOMMENDATIONS TO

14 CALIFORNIA DEPARTMENT OF DISMISS ACTION WITHOUT PREJUDICE1
CORRECTION & REHABILITATION, et. 15 al.,

16 Defendants. FOURTEEN DAY DEADLINE 17 18 Plaintiff Damen D. Rabb is a state prisoner
proceeding pro se and in forma pauperis in 19 this civil rights action. For the reasons set forth
below, the undersigned recommends that the 20 District Court dismiss this action without
prejudice for Plaintiff’s failure to comply with a court 21 order and prosecute this action.

22 BACKGROUND

23 Plaintiff initiated this action by filing a rights complaint under 42 U.S.C. § 1983 alleging 24
violation of Plaintiff’s due process rights under the Fourteenth Amendment. (Doc. No. 1, 25
“Complaint”). The gravamen of the Complaint concerns damage to Plaintiff’s television. 26
Plaintiff sought “monetary compensation” to replace his television and \$5,000 in punitive 27 1
This matter was referred to the undersigned pursuant to 28 U.S.C. §636(b)(1)(B) and Eastern
District of 28 California Local Rule 302 (E.D. Cal.). 1 damages. 2 On October 22, 2025, pursuant
to 28 U.S.C. § 1915A, the Court issued a screening order 3 finding the Complaint, as pled, failed

to state any federal claim. (See generally Doc. No. 11). 4 The Court afforded Plaintiff three options: (1) file an amended complaint; (2) file a “Notice to 5 Stand” on his initial complaint subject to the undersigned recommending the district court dismiss 6 the Complaint for reasons stated in the October 22, 2025 Screening Order; or (3) file a “Notice of 7 Voluntarily Dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(1)” to avoid 8 a strike because no defendant had yet been served. (Id. at 6-7). The Court expressly warned 9 Plaintiff that if he fails to timely respond to this Court Order” the undersigned “will recommend 10 that the district court dismiss this case as a sanction for Plaintiff’s failure to comply with a court 11 order and prosecute this action after its determination that the complaint failed to state a claim, 12 which will count as strike under the PLRA.” (Id. at 7). As of the date of this Findings and 13 Recommendation, Plaintiff has failed to exercise any of the three options from the Court’s 14 Screening Order, or request an extension of time to comply, and the time to do so has expired.² 15 See docket.

16 APPLICABLE LAW AND ANALYSIS

17 A. Legal Standard 18 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action 19 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court 20 order. See Fed. R. Civ. P. 41(b); see *Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 21 (9th Cir. 2019) (citations omitted). Similarly, this Court’s Local Rules, which correspond with 22 Federal Rule of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with ... 23 any order of the Court may be grounds for the imposition by the Court of any and all sanctions ... 24 within the inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent power 25 to control their dockets” and, in exercising that power, may impose sanctions, including dismissal 26 2 The Court advised Plaintiff that after electing his option, he must deliver either his amended complaint or 27 appropriate notice to correctional officials for mailing no later than November 24, 2025. (Doc. No. 11 at 7, ¶ 1). Twenty days have passed since the November 24, 2025 deadline, allotting sufficient time to 28 account for mailing before issuing these Findings and Recommendations. 1 of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). 2 A court may dismiss an action based on a party’s failure to prosecute an action, obey a court 3 order, or comply with local rules. See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 4 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. 5 Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court 6 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to 7 prosecute and to comply with local rules). In determining whether to dismiss an action, the Court 8 must consider the following factors: (1) the public’s interest in expeditious resolution of 9 litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; 10 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less 11 drastic sanctions. *Henderson*, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 12 1988). 13 B. Analysis 14 After considering each of the above-stated factors, the undersigned concludes dismissal 15 without prejudice is warranted

in this case. As to the first factor, the expeditious resolution of 16 litigation is deemed to be in the public interest, satisfying the first factor. *Yourish v. California 17 Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999). 18 Turning to the second factor, this Court’s need to efficiently manage its docket cannot be 19 overstated. This Court has one of the heaviest caseloads in the nation, and due to the delay in 20 filling judicial vacancies, which was further exacerbated by the COVID-19 pandemic, operated 21 under a declared judicial emergency through May 2, 2021. See *In re Approval of the Judicial 22 Emergency Declared in the Eastern District of California*, 956 F.3d 1175 (9th Cir. 2020). This 23 Court’s time is better spent on its other matters than needlessly consumed managing a case with a 24 recalcitrant litigant. The Court cannot effectively manage its docket when a litigant ceases to 25 litigate his/her case or respond to a court order. Thus, the Court finds that the second factor 26 weighs in favor of dismissal. 27 Delays inevitably have the inherent risk that evidence will become stale or witnesses’ 28 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third 1 factor. See *Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor—risk of prejudice 2 to defendant—weighs in favor of dismissal since a presumption of injury arises from the 3 unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 4 1976). Because Plaintiff’s inaction amounts to an unreasonable delay in prosecuting this action, 5 the third factor weighs in favor of dismissal. 6 The fourth factor usually weighs against dismissal because public policy favors the 7 disposition of cases on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). 8 However, “this factor lends little support to a party whose responsibility it is to move a case 9 toward disposition on the merits but whose conduct impedes progress in that direction,” which is 10 the case here. In *re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 11 1228 (9th Cir. 2006) (citation omitted). Indeed, “trial courts do not have time to waste on 12 multiple failures by aspiring litigants to follow the rules and requirements of our courts.” 13 *Pagtalunan v. Galaza*, 291 F.3d 639, 644 (9th Cir. 2002) (Trott, J., concurring in affirmance of 14 district court’s involuntary dismissal with prejudice of habeas petition where petitioner failed to 15 timely respond to court order and noting “the weight of the docket-managing factor depends upon 16 the size and load of the docket, and those in the best position to know what that is are our 17 beleaguered trial judges.”). Further, as set forth in the Screening Order, the Court already 18 determined that the Complaint, as pled, failed to state a claim, so this factor does not weigh in 19 favor of the Plaintiff. 20 Finally, the Court’s warning to a party that failure to obey the court’s order will result in 21 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262; 22 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court’s October 22, 2025 Order 23 expressly warned Plaintiff that his failure to comply with the Court’s order would result in a 24 recommendation for dismissal of this action. (Doc. 11 at 7, ¶ 2). Thus, Plaintiff had adequate 25 warning that dismissal could result from his noncompliance. And the instant dismissal is a 26 dismissal without prejudice, which is a lesser sanction than a dismissal with prejudice, thereby 27 satisfying the fifth factor. 28 After considering the factors set forth *supra* and binding case law, the

undersigned 1 || recommends dismissal, without prejudice, under Fed. R. Civ. P. 41(b) and Local Rule 110. 2 Accordingly, it is ORDERED: 3 The Clerk of the Court randomly assign this case to a District Judge. 4 It is further RECOMMENDED: 5 This action be DISMISSED without prejudice for Plaintiff's failure to obey a court order 6 | and failure to prosecute this action.

7 NOTICE TO PARTIES

8 These Findings and Recommendations will be submitted to the United States District 9 | Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within 14 days 10 | after being served with a copy of these Findings and Recommendations, a party may file written 11 | objections with the Court. /d.; Local Rule 304(b). The document should be captioned, 12 | "Objections to Magistrate Judge's Findings and Recommendations" and shall not exceed fifteen 13 | (15) pages. The Court will not consider exhibits attached to the Objections. To the extent a party 14 | wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its 15 | CM/ECF document and page number, when possible, or otherwise reference the exhibit with 16 || specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by 17 | the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 18 | 636(b)d)(C). A party's failure to file any objections within the specified time may result in the 19 | waiver of certain rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). 20 21 Dated: _ December 15, 2025 law ZA. foareh Back

22 HELENA M. BARCH-KUCHTA

33 UNITED STATES MAGISTRATE JUDGE

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