

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

James Kalaaukahi v. Y. Salinas Gonzales, et al.

Kalaaukahi v. Salinas Gonzales · No. 2:23-cv-1268-JDP (P) · Decided May 9, 2025

OPINION

(PC) Kalaaukahi v. Salinas Gonzalez

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 JAMES KALAAUKAHI, Case No. 2:23-cv-1268-JDP (P) 12 Plaintiff,

13 v. ORDER; FINDINGS AND

RECOMMENDATIONS

14 Y. SALINAS GONZALES, et al., 15 Defendants. 16 17 Plaintiff has failed to engage
adequately in the litigation process, even though he has had 18 ample opportunity to do so. He has
failed to file a response to defendants’ motion to compel, and 19 I am convinced that no further
opportunity would cause plaintiff to file this response. Therefore, 20 I recommend that this action
be dismissed. 21 A brief review of the court’s and defendants’ efforts to obtain plaintiff’s
participation is 22 warranted. On November 8, 2024, defendants filed a motion to compel. ECF
No. 38. After 23 plaintiff did not respond, I ordered him, on January 6, 2025, to show cause for his
failure to 24 prosecute and to comply with court orders. ECF No. 42. On January 31, 2025,
plaintiff filed a 25 document that stated, “Dear courthouse, I would like my case to be heard, it’s
not fair for them to 26 get way with what they did to me, please I would like to go forward with
the case.” ECF No. 44 27 (cleaned up). In light of that filing and plaintiff’s pro se status, I granted
plaintiff until February 28 28, 2025, to file a response to defendants’ motion. ECF No. 45. I also
warned him that should he 1 fail to comply with that order, it would constitute another failure to
comply with a court order and 2 would result in a recommendation that this action be dismissed.
Id. 3 Plaintiff then filed a motion to appoint counsel. ECF No. 46. He stated that without the 4
appointment of counsel, he could not respond to defendants’ motion due to his mental illness. Id. 5
On March 4, 2025, I denied that motion. ECF No. 47. There, I reminded plaintiff that he must 6
actively participate in this litigation; he filed this lawsuit, and defendants have the right to seek 7
discovery from him. I granted plaintiff a final chance to respond to defendants’ motion. Id. In 8
response, plaintiff filed a request for time to respond to the motion and stated that he lost his copy
9 of the motion to compel. ECF No. 48. I granted both of plaintiff’s requests. I ordered defendants
10 to re-serve the motion to compel on plaintiff, which they did, ECF No. 50, and granted plaintiff

11 an additional forty-five days to respond. ECF No. 49. The deadline for plaintiff to respond has
12 passed without response. Accordingly, dismissal is warranted. 13 The court has the inherent
power to control its docket and may, in the exercise of that 14 power, impose sanctions where
appropriate, including dismissal. *Bautista v. Los Angeles Cnty.*, 15 216 F.3d 837, 841 (9th Cir.
2000); see Local Rule 110 (“Failure of counsel or of a party to 16 comply with these Rules or with
any order of the Court may be grounds for imposition by the 17 Court of any and all sanctions . . .
within the inherent power of the Court.”). 18 A court may dismiss an action based on a party’s
failure to prosecute an action, failure to 19 obey a court order, or failure to comply with local
rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 20 (9th Cir. 1995) (dismissal for noncompliance
with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 21 1260-61 (9th Cir. 1992) (dismissal for
failure to comply with an order to file an amended 22 complaint); *Carey v. King*, 856 F.2d 1439,
1440-41 (9th Cir. 1988) (dismissal for failure to 23 comply with local rule requiring pro se
plaintiffs to keep court apprised of address); *Malone v. 24 U.S. Postal Serv.*, 833 F.2d 128, 130
(9th Cir. 1987) (dismissal for failure to comply with court 25 order); *Henderson v. Duncan*, 779
F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of 26 prosecution and failure to comply with
local rules). 27 In recommending that this action be dismissed for failure to prosecute and failure
to 28 comply with court orders, I have considered “(1) the public’s interest in expeditious
resolution of 1 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
defendants; 2 (4) the public policy favoring disposition of cases on their merits; and (5) the
availability of less 3 drastic alternatives.” *Ferdik*, 963 F.2d at 1260-61 (citation omitted). 4 As laid
out above, plaintiff has failed to engage in the litigation process repeatedly. 5 Therefore, the public
interest in expeditious resolution of litigation, the court’s need to manage its 6 docket, and the risk
of prejudice to the defendant all cut in favor of the sanction of dismissal. My 7 warning to plaintiff
that failure to obey court orders will result in dismissal satisfies the 8 “considerations of the
alternatives” requirement.¹ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 at 132- 9 33; *Henderson*, 779
F.2d at 1424. Plaintiff had adequate warning that dismissal could result from 10 his
noncompliance. Accordingly, I find that the balance of factors weighs in favor of dismissal. 11
Accordingly, it is hereby ORDERED that the Clerk of Court randomly assign a district 12 judge to
this matter. 13 Further, it is hereby RECOMMENDED that: 14 1. This action be DISMISSED
without prejudice for failure to prosecute and failure to 15 comply with court orders for the
reasons set forth in the January 6, 2025, February 7, 2025,
16 March 4, 2025, and March 18, 2025 orders.

17 2. Defendants’ motion to compel, ECF No. 38, is DENIED as moot. 18 3. The Clerk of Court
be directed to close the case. 19 These findings and recommendations are submitted to the United
States District Judge 20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).
Within fourteen days of 21 service of these findings and recommendations, any party may file
written objections with the 22 court and serve a copy on all parties. Any such document should be
captioned “Objections to 23 Magistrate Judge’s Findings and Recommendations,” and any

response shall be served and filed 24 within fourteen days of service of the objections. The parties are advised that failure to file 25 objections within the specified time may waive the right to appeal the District Court's order. See 26 27 1 The January 6, 2025, February 7, 2025, March 4, 2025, and March 18, 2025 orders expressly warned plaintiff that his failure to comply with court orders would result in dismissal. 28 ECF Nos. 42, 45, 47, & 49. 1 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Yist, 951 F.2d 1153 (9th Cir. 2 | 1991). 3 4 IT IS SO ORDERED.

Dated: _ May 9, 2025 aw——

6 JEREMY D. PETERSON

7 UNITED STATES MAGISTRATE JUDGE

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