

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Ali v. Bridgecrest Credit Company LLC

Ali · No. 1:24-cv-01364-JLT-EPG · Decided April 23, 2025

SUMMARY

The United States Magistrate Judge recommends dismissing Hussein Ali’s civil rights action against Bridgecrest Credit Company, LLC without prejudice. The recommendation is based on Ali’s failure to comply with a court order and Eastern District of California Local Rule 183(b) by failing to maintain a current address, as well as his failure to oppose the pending motion to dismiss. The recommendation applies the factors governing dismissal for failure to prosecute under Federal Rule of Civil Procedure 41(b).

OPINION

Ali v. Bridgecrest Credit Company LLC

PER CURIAM.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

9 10 HUSSEIN ALI, Case No. 1:24-cv-01364-JLT-EPG 11 Plaintiff, FINDINGS AND

12 RECOMMENDATIONS TO DISMISS

v. THIS ACTION WITHOUT PREJUDICE

13 DUE TO PLAINTIFF’S FAILURE TO

BRIDGECREST CREDIT COMPLY WITH A COURT ORDER

14 COMPANY, LLC AND LOCAL RULE 183(b)

15 Defendant. OBJECTIONS, IF ANY,

DUE WITHIN 30 DAYS

16 17 18 Plaintiff Hussein Ali is proceeding pro se in this civil rights action filed on October 3, 19
2024, against Bridgecrest Credit Company, LLC (“Bridgecrest” or “Defendant”). On
20 November 13, 2024, Bridgecrest filed a motion to dismiss the complaint for failure to state a
21 claim. (ECF No. 5). Plaintiff has not opposed the motion. Plaintiff has not otherwise appeared
22 in this case since its removal from state court, and all of mail the Court has sent Plaintiff has 23
been returned as undeliverable. 24 Because Plaintiff has failed to comply with a court order and
Local Rule 183(b), both of 25 which require a Plaintiff to notify the Court of the Plaintiff’s current
address, the Court will 26 recommend that this action be dismissed without prejudice.

27 I. ANALYSIS

28 This Court's informational order entered on November 7, 2024, states as follows: 1 A Plaintiff proceeding in propria persona has an affirmative duty to keep the Court 2 and opposing parties informed of his or her current address. If a plaintiff moves 3 and fails to file a notice of change of address, service of Court orders at plaintiff's prior address shall constitute effective notice. See Local Rule 182(f). 4 If mail directed to plaintiff is returned by the U.S. Postal Service as undeliverable, the Court will not attempt to re-mail it. If the address is not updated within 60 5 days of the mail being returned, the action will be dismissed for failure to 6 prosecute. 7 (ECF No. 4-3 at 3) (emphasis in original). 8 Additionally, Local Rule 183(b) provides as follows: A party appearing in propria persona shall keep the Court and opposing parties 9 advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff 10 fails to notify the Court and opposing parties within sixty-three (63) days 11 thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute. 12 E.D. Cal. L.R. 183(b) (emphasis omitted). 13 On November 7, 2024, the Clerk served Plaintiff at the address provided on the 14 complaint with, among other documents, the Court's scheduling order, informational order, and 15 a blank consent form. On November 20, 2024, the Clerk sent Plaintiff a copy of the Court's 16 November 20 minute order and the November 20 notice of reassignment. The next day, on 17 November 21, 2024, the Clerk sent Plaintiff a copy of Judge Thurston's standing order. Over 18 the next several months, the Court sent Plaintiff additional mail, including several other minute 19 orders. However, on February 20, 2025, the mail originally sent to Plaintiff on November 20, 20 2024, and November 21, 2024, was returned as undeliverable due to a "closed box." The next 21 day, the documents first mailed to Plaintiff on November 7, 2025, were also returned as not 22 deliverable and unable to be forwarded. Since then, the rest of Plaintiff's legal mail has been 23 returned as undeliverable. More than 62 days have passed since Plaintiff's mail was first 24 returned as undeliverable, and Plaintiff has not filed a notice of change of address or anything 25 else in this case since then. 26 Under Federal Rule of Civil Procedure 41(b), a court may dismiss an action for failure 27 to comply with court orders and to prosecute. In determining whether to dismiss an action 28 1 under Rule 41(b) for failure to prosecute or failure to comply with a Court order, "the Court 2 must weigh the following factors: (1) the public's interest in expeditious resolution of 3 litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to 4 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy 5 favoring disposition of cases on their merits." *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992)).

7 In applying the *Pagtalunan* factors to this case, the first factor weighs in favor of 8 dismissal, because "[t]he public's interest in expeditious resolution of litigation always favors 9 dismissal." *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) 10 (internal quotation marks omitted). 11 As to the second factor, the Court's need to manage its docket, "[t]he

trial judge is in 12 the best position to determine whether the delay in a particular case interferes with docket 13 management and the public interest.” Id. As described above, Plaintiff has failed to provide an 14 updated address as required by a court order and Local Rule 183(b), which interferes with 15 docket management and keeps the case from progressing. Notably, by failing to provide an 16 updated address to receive the Court’s orders, Plaintiff lacks critical information for how to 17 progress the case. Accordingly, this factor weighs in favor of dismissal. 18 Turning to the third Pagtalunan factor, risk of prejudice to Defendants, “pendency of a 19 lawsuit is not sufficiently prejudicial in and of itself to warrant dismissal.” Pagtalunan, 291 20 F.3d at 642 (citing Yourish, 191 F.3d at 991). However, “delay inherently increases the risk 21 that witnesses’ memories will fade and evidence will become stale,” and it is Plaintiff’s 22 inaction that is delaying the case from progressing. Id. at 643. Moreover, Plaintiff’s decision 23 not to oppose the pending motion to dismiss, suggests that this case lacks merit. Accordingly, 24 this third factor weighs in favor of dismissal. 25 As for the availability of lesser sanctions, the fourth Pagtalunan factor, at this stage in 26 the proceedings there is little available to the Court which would constitute a satisfactory lesser 27 sanction while protecting the Court from further unnecessary expenditure of its scarce 28 resources. It is unclear whether Plaintiff would be able to pay a monetary sanction. 1 Additionally, given the stage of these proceedings, the preclusion of evidence or witnesses is 2 not available. Moreover, dismissal without prejudice is the lesser sanction available to the 3 Court. Under Federal Rule of Civil Procedure 41(b), a court may dismiss an action with 4 prejudice for failure to comply with court orders and to prosecute. Fed. R. Civ. P. (41)(b); see 5 also *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962) (holding that Rule 41(b) allows sua 6 sponte dismissal by the Court because “[t]he authority of a court to dismiss sua sponte for lack 7 of prosecution has generally been considered an ‘inherent power,’ governed not by rule or 8 statute but by the control necessarily vested in courts to manage their own affairs so as to 9 achieve the orderly and expeditious disposition of cases.”). Therefore, the fourth factor also 10 weighs in favor of dismissal. 11 Finally, because public policy favors disposition on the merits, this factor weighs 12 against dismissal. Pagtalunan, 291 F.3d at 643. 13 After weighing the factors, the Court finds that dismissal without prejudice is 14 appropriate.

15 II. CONCLUSION AND RECOMMENDATIONS

16 Accordingly, the Court RECOMMENDS that: 17 1. This action be dismissed without prejudice under Federal Rule of Civil Procedure 18 41(b) due to Plaintiff’s failure to comply with a court order and Local Rule 183(b); 19 2. The pending motion to dismiss (ECF No. 5) be denied as moot; and 20 3. The Clerk of Court be directed to close this case. 21 These findings and recommendations will be submitted to the United States district 22 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within 23 thirty days after being served with these findings and recommendations, Plaintiff may file 24 written objections with the Court. The document should be captioned “Objections to 25 Magistrate Judge’s Findings and Recommendations.” 26 \\\ 27 \\\ 28 \\\ 1 Plaintiff is advised that failure to file objections within the

specified time may result in 2 || the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) 3 || (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 4
5 IT IS SO ORDERED. 6 |! Dated: _April 23, 2025 [see hey
7 UNITED STATES MAGISTRATE JUDGE
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28