

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Martin Lee Foster v. Littles

Foster v. Littles · No. 2:25-CV-2198-DC-DMC-P · Decided December 17, 2025

SUMMARY

The court recommends dismissal without prejudice of Martin Lee Foster's 42 U.S.C. § 1983 action against Littles for failure to resolve the filing-fee status and comply with court orders. Applying the Ninth Circuit's dismissal factors, the magistrate judge concludes that dismissal for lack of prosecution and failure to comply with court rules and orders is appropriate.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dennis M. Cota
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 17, 2025
DOCKET	2:25-CV-2198-DC-DMC-P
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations in a prisoner civil-rights action recommending dismissal without prejudice for lack of prosecution and failure to comply with court rules and orders.
STANDARD OF REVIEW	Dismissal for lack of prosecution and failure to comply with court orders is evaluated under the five-factor test addressing the public interest in expeditious resolution, the court's need to manage its docket, prejudice to opposing parties, the policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Martin Lee Foster v. Littles

TOPICS

- sanctions
- civil procedure
- prisoners rights
- section 1983

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice for lack of prosecution and failure to comply with court rules and orders.
2. Whether the five-factor Ninth Circuit test for dismissal as a sanction supports dismissal under the circumstances.

HOLDINGS

1. Dismissal without prejudice was appropriate because Plaintiff failed to resolve the fee status as directed after receiving the order and warning of possible dismissal.

KEY QUOTATIONS

“The Court must weigh five factors before imposing the harsh sanction of dismissal.” (at 1-2)

“A warning that the action may be dismissed as an appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.” (at 2)

“Based on the foregoing, the undersigned recommends that this action be dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and orders.” (at 2)

FACTUAL BACKGROUND

Plaintiff, a prisoner proceeding pro se, was directed to resolve the fee status for his § 1983 action. After his change of address, the court re-served the extension order and had previously warned him that failure to resolve the fee status could result in dismissal. Plaintiff did not resolve the fee status or otherwise comply with the court's direction.

PROCEDURAL HISTORY

Plaintiff filed a civil-rights action under 42 U.S.C. § 1983. The court directed him to resolve the case's fee status within 30 days, re-served that order after his change of address, and warned that noncompliance could result in dismissal. Plaintiff did not comply, leading the magistrate judge to recommend dismissal without prejudice; the recommendation was submitted to the assigned district judge under 28 U.S.C. § 636(b)(1), subject to objections.

DISPOSITION

other

CASES CITED

- *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000)
- *Malone v. U.S. Postal Service*, 833 F.2d 128, 130, 132-33 & n.1 (9th Cir. 1987)
- *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam)

- Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA
 MARTIN LEE FOSTER, No. 2:25-CV-2198-DC-DMC-P
 Plaintiff, v. FINDINGS AND RECOMMENDATIONS LITTLES, Defendant.
 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. On September 23, 2025, the Court directed Plaintiff to resolve the fee status for this case within 30 days.

See ECF No. 7 (order granting extension of time). Following Plaintiff's notice of change of address, the order granting an extension of time at ECF No. 7 was re-served on Plaintiff at his current address on October 29, 2025. Plaintiff has been warned that failure to resolve the fee status may result in dismissal of this action for lack of prosecution and failure to comply with court rules and orders.

See Local Rule 110. To date, Plaintiff has not complied. The Court must weigh five factors before imposing the harsh sanction of dismissal. See *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its own docket; (3) the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.

See *id.*; see also *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor. See *Malone*, 833 F.2d at 132-33 & n.1.

The sanction of dismissal for lack of prosecution is appropriate where there has been unreasonable delay. See *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to comply with an order to file an amended complaint. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.

1992). Having considered these factors, and in light of Plaintiff's failure to resolve the fee status for this case as directed, the Court finds that dismissal of this action is appropriate. Based on the foregoing, the undersigned recommends that this action be dismissed, without prejudice, for lack of prosecution and failure to comply with court rules and orders.

14 These findings and recommendations are submitted to the United States District 15 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 16 | after being served with these findings and recommendations, any party may file written 17 || objections with the court. Responses to objections shall be filed within 14 days after service of 18 || objections.

Failure to file objections within the specified time may waive the right to appeal. See 19 | Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 20 21 | Dated: December 17, 2025 = Co 22 DENNIS M. COTA 33 UNITED STATES MAGISTRATE JUDGE 24 25 26 27 28