

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

Macey E. Turley, Jr. v. Elmante

Turley v. Elmante · No. 1:23-cv-00596-JLT-CDB (PC) · Decided January 8, 2026

OPINION

Elmante

PER CURIAM.

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5 UNITED STATES DISTRICT COURT

6 EASTERN DISTRICT OF CALIFORNIA

7 8 MACEY E. TURLEY, JR., Case No. 1:23-cv-00596-JLT-CDB (PC) 9 Plaintiff, FINDINGS
AND RECOMMENDATIONS

TO DISMISS ACTION WITHOUT

10 v. PREJUDICE FOR PLAINTIFF'S FAILURE

TO PROSECUTE AND TO OBEY COURT

11 ELMANTE, ORDERS AND LOCAL RULES

12 Defendant. (Doc. 39)

13 14-DAY OBJECTION PERIOD

14 Plaintiff Macey E. Turley, Jr. is proceeding pro se and in forma pauperis in this civil rights 15
action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's Eighth Amendment
claims 16 for adverse conditions of confinement and deliberate indifference against Defendant
Elmante. 17 (Docs. 1, 11). On March 9, 2024, Defendant filed an answer to Plaintiff's complaint.
(Doc. 17). 18 On December 5, 2024, the Court issued the discovery and scheduling order setting
forth discovery 19 dates and deadlines. (Doc. 34). On October 14, 2025, the Court granted
Defendant's ex parte 20 motion to amend the scheduling order and continued the deadline to file
dispositive motions to

21 November 7, 2025. (Doc. 37). On November 7, 2025, Defendant filed the pending motion for
22 summary judgment, making Plaintiff's response due on November 28, 2025, plus time for
mailing. 23 (Doc. 38). 24 After the deadline by which Plaintiff was required to respond to
Defendant's motion for 25 summary judgment passed and Plaintiff had not filed any response,
sought an extension, or 26 otherwise explained the delinquency, on December 5, 2025, the Court
ordered Plaintiff to show 27 cause in writing within 14 days of service of the order (i.e., by
December 22, 2025, see Fed. R. Civ. P. 6(d)) why sanctions should not be imposed for his failure
to file an opposition or statement of 1 non-opposition to Defendant's pending motion. (Doc. 39).
Plaintiff was provided the opportunity 2 to comply in the alternative by filing within that same

time an opposition or statement of non- 3 opposition to Defendant's pending motion. Id. at 3. Plaintiff was forewarned that "[a]ny failure 4 by Plaintiff to respond to this Order will result in a recommendation to dismiss this action 5 for failure to obey court orders and failure to prosecute." Id. (emphasis original). 6 Plaintiff has failed to file a response to the Court's show cause order or an opposition or 7 statement of non-opposition to Defendant's pending motion for summary judgment, and the time 8 to do so has passed. Accordingly, the undersigned will recommend that this action be dismissed 9 without prejudice for Plaintiff's failure to obey a court order and to prosecute this action. 10 Governing Authority 11 Local Rule 110, corresponding with Federal Rule of Civil Procedure 11, provides that 12 "[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may 13 be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of 14 the Court." Local Rule 110. The Court has the inherent power to control its docket and may, in 15 the exercise of that power, impose sanctions where appropriate, including dismissal of the action. 16 *Bautista v. Los Angeles Cnty.*, 216 F.3d 837, 841 (9th Cir. 2000). A court may dismiss an action 17 based on a party's failure to prosecute an action, obey a court order, or comply with local rules. 18 See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to 19 comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 20 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 21 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local 22 rules). 23 Relevant here, Local Rule 230(l) provides in relevant part that in all motions wherein one 24 party is incarcerated and proceeding in propria persona, opposition thereto, "if any, to the granting 25 of the motion shall be served and filed by the responding party not more than twenty-one (21) days 26 after the date of service of the motion. A responding party who has no opposition to the granting 27 of the motion shall serve and file a statement to that effect, specifically designating the motion in 1 may be deemed a waiver of any opposition to the granting of the motion and may result in the 2 imposition of sanctions." See Local Rule 230(l). 3 "In determining whether to dismiss an action for lack of prosecution, the district court is 4 required to weigh several factors: (1) the public's interest in expeditious resolution of litigation; (2) 5 the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public 6 policy favoring disposition of cases on their merits; and (5) the availability of less drastic 7 sanctions." *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (internal quotation marks & 8 citation omitted). These factors guide a court in deciding what to do and are not conditions that 9 must be met in order for a court to take action. In *re Phenylpropanolamine (PPA) Products* 10 *Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted). 11 Discussion 12 Here, Plaintiff has failed to comply with the Court's orders and Local Rules. Plaintiff has 13 filed no response to the Court's order to show cause nor an opposition or statement of non- 14 opposition to Defendant's pending motion for summary judgment, and the time to do so has passed. 15 There are no other reasonable alternatives available to address Plaintiff's failure to respond and 16 otherwise obey this Court's

orders and Plaintiff's failure to prosecute. Thus, the first and second 17 factors — the expeditious resolution of litigation and the Court's need to manage its docket — 18 weigh in favor of dismissal. Carey, 856 F.2d at 1440. 19 The third factor, risk of prejudice to Defendant, also weighs fairly in favor of dismissal 20 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an 21 action. See Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). This matter cannot proceed 22 further without Plaintiff's participation to prosecute the case respond to the pending motion for 23 summary judgment filed on November 7, 2025. (Doc. 38). The presumption of injury holds given 24 Plaintiff's unreasonable delay in prosecuting this action. Thus, the third factor—a risk of prejudice 25 to the Defendant—also weighs in favor of dismissal. Carey, 856 F.2d at 1440. 26 The fourth factor usually weighs against dismissal because public policy favors disposition 27 on the merits. Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002). However, "this factor 1 merits but whose conduct impedes progress in that direction." In re PPA, 460 F.3d at 1228. 2 Plaintiff has not moved this case forward toward disposition on the merits. He has instead failed 3 to comply with this Court's orders and the Local Rules and, thus, is impeding the progress of this 4 action. More than 60 days have passed since Defendant filed its pending motion for summary 5 judgment, and more than one month since the Court issued its show cause order on Plaintiff, yet 6 Plaintiff has failed to file a response in compliance with the Court's order. Therefore, the fourth 7 factor—the public policy favoring disposition of cases on their merits—also weighs in favor of 8 dismissal. Carey, 856 F.2d at 1440. 9 Finally, the Court's warning to a party that failure to obey the court's order will result in 10 dismissal satisfies the "considerations of the alternatives" requirement. Ferdik, 963 F.2d at 1262. 11 Here, the Court's show cause order requiring a response from Plaintiff cautioned: "Any failure by 12 Plaintiff to respond to this Order will result in a recommendation to dismiss this action for 13 failure to obey court orders and failure to prosecute." (Doc. 39 at 3) (emphasis original). 14 Plaintiff was adequately forewarned that the failure to timely respond to the show cause order would 15 result in terminating sanctions. Thus, the fifth factor—the availability of less drastic sanctions — 16 weighs in favor of dismissal. Ferdik, 963 F.2d at 1262; Carey, 856 F.2d at 1440. 17 In sum, Plaintiff has failed to comply with this Court's order and the Local Rules, and in 18 doing so, has failed to prosecute this action. Having weighed the equities and considered the 19 relevant factors noted above, the undersigned concludes that dismissal of the action is warranted. 20 21 22

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1 Conclusion and Recommendation 2 For the foregoing reasons, the undersigned RECOMMENDS that: 3 1. The Court DISMISS this action without prejudice for Plaintiffs failure to obey the Court's 4 orders and Local Rules and for failure to prosecute this action. See Local Rules 110, □□□□□□ 5 2. The Clerk of the Court be DIRECTED to close this case. 6 These Findings and Recommendations will be submitted to the United States District Judge 7 | assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after 8 | being served with a copy of these Findings and Recommendations, a party may file written 9 | objections with the Court. Local Rule

304(b). The document should be captioned, “Objections to 10 | Magistrate Judge’s Findings and Recommendations” and shall not exceed 15 pages without leave 11 | of Court and good cause shown. The Court will not consider exhibits attached to the Objections, 12 | but a party may refer to exhibits in the record by CM/ECF document and page number. Any pages 13 | filed in excess of the 15-page limitation may be disregarded by the District Judge when reviewing 14 | these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party’s failure to file any 15 | objections within the specified time may result in the waiver of certain rights on appeal. Wilkerson 16 | v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). 17 | IT IS SO ORDERED. 18 Dated: _ January 7, 2026 |) Ww Vv R~

19 UNITED STATES MAGISTRATE JUDGE

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