

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

Emerson Robert Gaitan v. Macomber et al.

No. 1:25-cv-00915-JLT-HBK (E.D. Cal. Dec. 18, 2025) · No. 1:25-cv-00915-JLT-HBK · Decided December 18,
2025

SUMMARY

The United States Magistrate Judge recommends that Emerson Robert Gaitan’s 42 U.S.C. § 1983 action against Macomber and other defendants be dismissed without prejudice. The recommendation is based on Plaintiff’s failure to comply with orders concerning his application to proceed in forma pauperis and his failure to prosecute the action. The document applies Federal Rule of Civil Procedure 41(b), Eastern District of California Local Rule 110, and the Ninth Circuit’s dismissal-factor test.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 EMERSON ROBERT GAITAN, Case No. 1:25-cv-00915-JLT-HBK 12
Plaintiff, FINDINGS AND RECOMMENDATIONS TO DISMISS ACTION1 13 v. FOURTEEN-
DAY DEADLINE 14 MACOMBER et al., 15 Defendants. 16 17 Plaintiff Emerson Gaitan is
proceeding pro se in this civil rights action filed under 42 18 U.S.C. § 1983 on July 25, 2025.

(Doc. No. 1, “Complaint”). For the reasons set forth below, the 19 undersigned recommends the
district court dismiss this action for Plaintiff’s failure to comply 20 with a court order and
prosecute this action. 21 BACKGROUND 22 On September 19, 2025, this Court issued Findings
and Recommendation (F&R) to the 23 district judge to deny Plaintiff’s application to proceed in
forma pauperis because Plaintiff’s 24 income level exceeded the federal poverty threshold under §
1915(a)(1) and Plaintiff’s 25 application reflected that he had adequate funds remaining each
month after he paid all monthly 26 expenses.

(Doc. No. 6). On October 2, 2025, Plaintiff filed Objections to the F&R. (Doc. No. 7, 27 1 This
matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302
28 (E.D. Cal. 2025). 1 “Objections”). Plaintiff stated he failed to include his rental payment of
\$850 a month in his 2 application to proceed in forma pauperis. (Id.).

On October 15, 2025, the Court construed 3 Plaintiff’s Objections as seeking reconsideration of
his application to proceed in forma pauperis. 4 (Id. at 2). The Court recalled its Findings and
Recommendations and directed Plaintiff to 5 complete an updated Application to Proceed in
District Court Without Prepayment of Fees or 6 Cost – AO 239, signed under penalty of perjury,

within twenty-one days of the Court's Order that 7 included all expenses Plaintiff wished the Court to consider.

(Id. at 2-3). The Court warned 8 Plaintiff if he failed to timely with the order or seek an extension of time to comply, the 9 undersigned would recommend the district court dismiss this action as a sanction and for failing 10 to comply with the court order and prosecute this action. (Id. at 3 ¶ 5). 11 After Plaintiff failed to respond to the Court's October 15, 2025 Order, the Court issued 12 an Order to Show Cause on November 20, 2025.

(Doc. No. 9, "Show Cause Order"). In its Show 13 Cause Order, the Court directed Plaintiff within, fourteen 14) days, to take one of the following 14 actions: (a) file an amended Application to Proceed in District Court Without Prepaying Fees or 15 Costs (Long Form) – AO 239, signed under penalty of perjury, that reflects all expenses that 16 Plaintiff wants the court to consider, including his monthly rental; (b) pay the \$405.00 filing fee; 17 or (c) show cause why the Court should not recommend that this case be dismissed without 18 prejudice for Plaintiff's failure to prosecute this action and/or his failure to timely comply with 19 the Court's October 15, 2025 Order.

(Id. at 2). Like its October 15, 2025 Order, the Court also 20 advised Plaintiff that if he failed to timely respond to the Show Cause Order, the undersigned 21 would recommend the district court dismiss this case for Plaintiff's failure to comply with a Court 22 order and prosecute this action. (Id.). 23 As of the date of this of these Findings and Recommendations, 24 Plaintiff has failed to 24 submit a response to the Court's October 15, 2025 Order and the Court's November 20, 2025 25 Show Cause Order, or request a further extension of time to comply, and the time to do so has 26 27 2 Despite Plaintiff not being entitled to the mailbox rule, the undersigned waited 14 days prior to issuing these Findings and Recommendations to afford sufficient time for mailing.

Further, 43 days has elapsed 28 from the October 15, 2025 deadline. 1 expired. (See docket). 2 APPLICABLE LAW AND ANALYSIS 3 A. Legal Standard 4 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action 5 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court 6 order. See Fed. R. Civ.

P. 41(b); see *Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 7 (9th Cir. 2019) (citations omitted). Similarly, this Court's Local Rules, which correspond with 8 Federal Rule of Civil Procedure 11, provide, "[f]ailure of counsel or of a party to comply with... 9 any order of the Court may be grounds for the imposition by the Court of any and all sanctions 10... within the inherent power of the Court." E.D.

Cal. L.R. 110. "District courts have inherent 11 power to control their dockets" and, in exercising that power, may impose sanctions, including 12 dismissal of an action. *Thompson v. Housing*

Auth., City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to prosecute an action, obey a court order, or comply with local rules.

See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

In determining whether to dismiss an action, the Court must consider the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.

Henderson, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). After considering each of the above-stated factors, the undersigned concludes dismissal without prejudice is warranted in this case.

As to the first factor, the expeditious resolution of litigation is deemed to be in the public interest, satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999). Turning to the second factor, this Court's need to efficiently manage its docket cannot be overstated. This Court has one of the heaviest caseloads in the nation, and due to the delay in filling judicial vacancies, which was further exacerbated by the COVID-19 pandemic, operated under a declared judicial emergency through May 2, 2021.

See *In re Approval of the Judicial Emergency Declared in the Eastern District of California*, 956 F.3d 1175 (9th Cir. 2020). This Court's time is better spent on its other matters than needlessly consumed managing a case with a recalcitrant litigant.

The Court cannot effectively manage its docket when a litigant ceases to litigate his/her case or respond to a court order. Thus, the Court finds that the second factor weighs in favor of dismissal. Delays inevitably have the inherent risk that evidence will become stale or witnesses' memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third factor.

See *Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor—risk of prejudice to defendant—weighs in favor of dismissal since a presumption of injury arises from the unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976).

Because Plaintiff's inaction amounts to an unreasonable delay in prosecuting this action, the third factor weighs in favor of dismissal. The fourth factor usually weighs against dismissal

because public policy favors the 18 disposition of cases on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). 19 However, “this factor lends little support to a party whose responsibility it is to move a case 20 toward disposition on the merits but whose conduct impedes progress in that direction,” which is 21 the case here.

In *re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 22 1228 (9th Cir. 2006) (citation omitted). Indeed, “trial courts do not have time to waste on 23 multiple failures by aspiring litigants to follow the rules and requirements of our courts.” 24 *Pagtalunan*, 291 F.3d at 644 (Trott, J., concurring in affirmance of district court’s involuntary 25 dismissal with prejudice of habeas petition where petitioner failed to timely respond to court 26 order and noting “the weight of the docket-managing factor depends upon the size and load of the 27 docket, and those in the best position to know what that is are our beleaguered trial judges.”).

28 Finally, the Court’s warning to a party that failure to obey the court’s order will result in 1 | dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262; 2 | *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424.

As noted *supra*, both the Court’s 3 | October 15, 2025 Order and its Show Cause Order expressly warned Plaintiff that his failure to 4 | timely comply would both Orders would result in a recommendation of dismissal of this action. 5 | (Doc. Nos. 8, 9).

Thus, Plaintiff had adequate warning that dismissal could result from his 6 | noncompliance. And the instant dismissal is a dismissal without prejudice, which is a lesser 7 | sanction than a dismissal with prejudice, thereby satisfying the fifth factor. 8 After considering the factors set forth *supra* and binding case law, the undersigned 9 | recommends dismissal, without prejudice, under Fed.

R. Civ. P. 41(b) and Local Rule 110. 10 It is further RECOMMENDED: 11 This action be DISMISSED without prejudice for Plaintiffs failure to obey court orders 12 | and prosecute this action. 13 NOTICE TO PARTIES 14 These Findings and Recommendations will be submitted to the United States District 15 | Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within 14 days 16 | after being served with a copy of these Findings and Recommendations, a party may file written 17 | objections with the Court. /d.; Local Rule 304(b). The document should be captioned, 18 | “Objections to Magistrate Judge’s Findings and Recommendations” and shall not exceed fifteen 19 | (15) pages.

The Court will not consider exhibits attached to the Objections. To the extent a party 20 | wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its 21 | CM/ECF document and page number, when possible, or otherwise reference the exhibit with 22 || specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by 23 |

the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 24 | 636(b)()(C).

A party’s failure to file any objections within the specified time may result in the 25 | waiver of certain rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). 26 Dated: _ December 18, 2025 law ZA. foareh Back 27 HELENA M. BARCH-KUCHTA 38 UNITED STATES MAGISTRATE JUDGE 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28