

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Nicole Jean Rogers v. Valero, et al.

Rogers v. Valero · No. No. 2:25-cv-0488-DC-CKD (PS) · Decided May 22, 2025

SUMMARY

The document contains findings and recommendations by a United States magistrate judge in a pro se civil action against Valero and others. It recommends dismissal for failure to prosecute under Federal Rule of Civil Procedure 41(b) because the plaintiff did not file an amended complaint or otherwise respond after the original complaint was dismissed with leave to amend.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Carolyn K. Delaney
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 22, 2025
DOCKET	No. 2:25-cv-0488-DC-CKD (PS)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal of a pro se civil action for failure to prosecute after the plaintiff failed to file an amended complaint or otherwise respond to an order granting leave to amend.
STANDARD OF REVIEW	Dismissal for failure to prosecute is evaluated under the five-factor framework concerning expeditious resolution, docket management, prejudice to defendants, the policy favoring disposition on the merits, and the availability of less drastic alternatives.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations; no precedential status is stated.

TOPICS

- civil procedure
- pleadings

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the action should be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41(b) after plaintiff failed to file an amended complaint or otherwise respond to the court's order.

HOLDINGS

1. Dismissal for failure to prosecute was warranted because plaintiff failed to comply with the order granting leave to amend, did not seek additional time, and did not otherwise participate in the action.

KEY QUOTATIONS

“(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 alternatives.” (at 2-3)

FACTUAL BACKGROUND

Plaintiff filed a pro se civil complaint that the court determined failed to state a claim. The court dismissed the complaint with leave to amend and ordered plaintiff to file an amended complaint within 30 days, expressly warning that failure to do so could result in dismissal. Plaintiff allowed the deadline to expire without filing an amended complaint, requesting an extension, or otherwise communicating with the court.

PROCEDURAL HISTORY

Plaintiff filed a pro se civil complaint. The court previously found that the complaint failed to state a claim and dismissed it with leave to amend, ordering plaintiff to file an amended complaint within 30 days and warning that failure to do so could result in dismissal. Plaintiff did not amend, seek an extension, or communicate with the court. The magistrate judge recommended dismissal for failure to prosecute and closure of the case, subject to objections and review by the assigned district judge.

DISPOSITION

other

CASES CITED

- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991)

OPINION

(PS) *Rogers v. Valero*

PER CURIAM.

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 NICOLE JEAN ROGERS, No. 2:25-cv-0488-DC-CKD (PS)

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 VALERO, et al., 15 Defendants. 16 17 18 Plaintiff filed a pro se civil complaint and the matter was referred to the undersigned by 19 Local Rule 302(c)(21) pursuant to 28 U.S.C. § 636(b). On April 17, 2025, plaintiff's complaint 20 was found not to state a claim and was dismissed with leave to amend. (See ECF No. 3.) The 21 undersigned ordered plaintiff file any amended complaint within 30 days of the date of that order. 22 (Id. at 4.) Plaintiff was specifically cautioned that failure to file an amended complaint or 23 otherwise respond to the order would result in a recommendation that this action be dismissed. 24 The time granted for plaintiff to file an amended complaint has expired. Plaintiff has not filed an 25 amended complaint, sought an extension of time to do so, or otherwise communicated with the 26 court. 27 In recommending this action be dismissed for failure to prosecute, the court has 28 considered "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to 1 || manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring 2 | disposition of cases on their merits; and (5) the availability of less drastic alternatives." *Ferdik v. 3 || Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (citation omitted). Because plaintiff has not 4 || stated a claim for relief and this case cannot move forward without plaintiff's participation, these 5 || factors weigh in favor of dismissal. 6 Based on the foregoing, IT IS HEREBY RECOMMENDED as follows: 7 1. This action be dismissed for failure to prosecute. See Fed. R. Civ. P. 41(b); and 8 2. The Clerk of the Court be directed to close this case. 9 These findings and recommendations are submitted to the United States District Judge 10 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 11 | after being served with these findings and recommendations, plaintiff may file written objections 12 || with the court and serve a copy on all parties. Such a document should be captioned "Objections 13 || to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file 14 || objections within the specified time may waive the right to appeal the District Court's order. 15 || *Martinez v. Yist*, 951 F.2d 1153 (9th Cir. 1991). 16 | Dated: May 22, 2025 / ae □□ / a Ly a

"7 CAROLYNK.DELANEY

18 UNITED STATES MAGISTRATE JUDGE

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