

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Larry William Cortinas v. Rios, et al.

Cortinas v. Rios · No. No. 2:23-CV-0388-WBS-DMC-P · Decided October 14, 2025

SUMMARY

Findings and recommendations from the United States District Court for the Eastern District of California recommending dismissal without prejudice of Larry William Cortinas's § 1983 action. The recommendation is based on Plaintiff's failure to pay required filing fees and comply with a court order, constituting lack of prosecution and failure to follow court rules and orders.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dennis M. Cota
DECIDED	October 14, 2025
DOCKET	No. 2:23-CV-0388-WBS-DMC-P
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a United States magistrate judge recommending dismissal without prejudice of a prisoner civil-rights action for failure to pay filing fees and failure to comply with court rules and orders.
STANDARD OF REVIEW	The court considered the five-factor test governing dismissal as a sanction for failure to prosecute or comply with court orders: the public interest in expeditious resolution, the court's need to manage its docket, prejudice to opposing parties, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations; not a final adjudication in the source text.

TOPICS

- sanctions
- civil procedure
- section 1983
- prisoners rights

PRACTICE AREAS

- civil procedure
- civil rights
- prisoner litigation
- remedies

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice for lack of prosecution and failure to comply with the court's order to pay filing fees.
2. Whether the five-factor dismissal analysis was satisfied, including whether the prior warning constituted an adequate less drastic sanction.

HOLDINGS

1. The court recommended dismissal without prejudice because Plaintiff failed to pay the filing fees as directed and failed to comply with court rules and orders.
2. A warning that the action may be dismissed is a less drastic alternative sufficient to satisfy the final factor of the Ninth Circuit's dismissal test.

KEY QUOTATIONS

“The Court must weigh five factors before imposing the harsh sanction of dismissal.” (Document text at lines 23-28)

“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.” (Document text at lines 8-11)

FACTUAL BACKGROUND

Plaintiff, a prisoner proceeding pro se, brought a civil-rights action under 42 U.S.C. § 1983. The court ordered him on August 18, 2025, to pay the filing fees within 30 days and warned that failure to resolve the fee status could result in dismissal. Plaintiff had not paid the filing fees or otherwise complied by the date of the recommendation.

PROCEDURAL HISTORY

Plaintiff filed a 42 U.S.C. § 1983 action while proceeding pro se and as a prisoner. On August 18, 2025, the court directed him to pay the filing fees within 30 days and warned that noncompliance could result in dismissal. Plaintiff did not comply, and the magistrate judge recommended dismissal without prejudice for lack of prosecution and failure to comply with court rules and orders. The parties were advised that they could file objections within 14 days.

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 LARRY WILLIAM CORTINAS, No. 2:23-CV-0388-WBS-DMC-P Plaintiff, v. FINDINGS AND RECOMMENDATIONS RIOS, et al., 15 Defendants. Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. On August 18, 2025, the Court directed Plaintiff to pay the filing fees for this case within 30 days.

Plaintiff was 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 Plaintiffs failure to pay the filing fees 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.

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

Failure to file objections within the specified time may waive the right to appeal. See 17 ||
Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 18 19 | Dated: October 10, 2025 Co 20 DENNIS
M. COTA 7] UNITED STATES MAGISTRATE JUDGE 22 23 24 25 26 27 28

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