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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

DONALD RAY SWIGER, JR.,  
Plaintiff,  
v.  
UNITED STATES,  
Defendant.

Case No. CV 16-320 DMG (MRW)  
**ORDER DISMISSING ACTION**

The Court dismisses the action without prejudice for failure to prosecute.

\* \* \*

This is a prisoner civil rights action. Plaintiff is an inmate at the federal prison facility in Lompoc. He previously was incarcerated at a U.S. military prison in Leavenworth, Kansas. According to the complaint, Plaintiff suffers from a variety of health conditions. He filed a civil complaint against the United States for undefined relief based on his medical treatment at those facilities. (Docket # 8-12, 17.)

1 Magistrate Judge Wilner screened Plaintiff's original and amended  
2 complaint. (Docket # 13.) Judge Wilner subsequently granted Plaintiff IFP status  
3 and ordered the complaint to be served on the government. (Docket # 18, 19.)

4 The Court granted the government's motion to dismiss the action. (Docket  
5 # 29, 31.) The Court concluded that the government did not waive sovereign  
6 immunity over Plaintiff's constitutional claims, which meant that the Court did not  
7 have jurisdiction over the matter. Nevertheless, the Court gave Plaintiff (a pro se  
8 litigant) an opportunity to amend his complaint to name an appropriate defendant.

9 After the Court dismissed the government, Plaintiff submitted a letter to the  
10 Clerk. (Docket # 32.) The confusing and rambling submission described a  
11 previous tort claim that Plaintiff pursued against the BOP, and attempted to  
12 relitigate the dismissal motion.

13 Judge Wilner issued an order rejecting the submission. (Docket # 33.) The  
14 magistrate judge again directed Plaintiff to file a recognizable civil complaint  
15 naming a proper party and stating a proper federal cause of action by April 7. (Id.)  
16 To date, however, Plaintiff failed to do so. As things stand, there is no valid  
17 complaint on file and no defendant named in this action.

18 \* \* \*

19 Rule 41(b) provides that if a plaintiff "fails to prosecute or to comply with  
20 these rules or a court order, a defendant may move to dismiss the action or any  
21 claim against it." Dismissal also may be ordered by the Court sua sponte. Link v.  
22 Wabash R.R., 370 U.S. 626, 629-30 (1962). Dismissal of a civil action under  
23 Rule 41 may be appropriate to advance the public's interest in the expeditious  
24 resolution of litigation, the court's need to manage its docket, and to avoid the risk  
25 of prejudice to defendants. Omstead v. Dell, Inc., 594 F. 3d 1081, 1084 (9th Cir.  
26 2010). Additionally, a court should consider the public policy favoring disposition  
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1 of cases on their merits and the availability of less drastic alternatives in its  
2 evaluation. Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

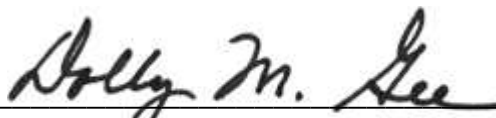
3 In the present action, the Court finds dismissal is appropriate. Plaintiff  
4 failed to amend his civil complaint after his claims against the government were  
5 dismissed. The magistrate directly informed Plaintiff of his obligation to file an  
6 amended complaint in order to advance the case. Plaintiff's failure to do so  
7 demonstrates that he has no interest in advancing the action here.

8 By contrast, the Court, the defense, and the public have a strong interest in  
9 terminating this action. This is particularly true given that Plaintiff has not named  
10 any appropriate party or filed any recognizable pleading that would feasibly allow  
11 the litigation to continue. The Court finds that dismissal is appropriate under  
12 Rule 41(b). Furthermore, because Plaintiff is a pro se litigant who did not abide by  
13 the Court's previous orders, no sanction short of dismissal will be effective in  
14 moving this case forward. Carey, 856 F.2d at 1440.

15 A dismissal under Rule 41 ordinarily "operates as an adjudication on the  
16 merits." However, given the circumstances here – Plaintiff never named a party  
17 over which this Court had jurisdiction – the Court elects to dismiss the action  
18 without prejudice.

19 IT IS SO ORDERED.

20  
21 DATED: May 16, 2017



22 DOLLY M. GEE  
23 UNITED STATES DISTRICT JUDGE

24 Presented by:



27 HON. MICHAEL R. WILNER  
28 UNITED STATES MAGISTRATE JUDGE