

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

**MARISSKA RICHARDS-NURSE,
AMANDA BURTON,**

Plaintiffs,

v.

**ST. CROIX AFT ELECTIONS
COMMITTEE LOCAL 1826,**

Defendant.

1:26-cv-00013-RAM-EAH

**TO: Marisska Richards-Nurse, Pro Se
Amanda Burton, Pro Se**

REPORT & RECOMMENDATION

THIS MATTER comes before the Court *sua sponte* upon the failure of Plaintiffs Marisska Richards-Nurse and Amanda Burton to pay the complaint filing fee or submit completed applications to proceed *in forma pauperis* after the Court afforded them time to do so. *See* Dkt. No. 9. Despite receiving the Court's May 21, 2026 Order identifying the deficiencies in their IFP submission, providing them with alternative means of satisfying the complaint filing-fee requirement, and warning them that noncompliance could result in dismissal, Plaintiffs have neither paid the complaint filing fee nor submitted completed IFP applications. Dkt. Nos. 13, 14. Therefore, the Court recommends that this action be dismissed without prejudice.

BACKGROUND

On May 7, 2026, Plaintiffs submitted a Complaint, which the Clerk's Office lodged pending disposition of Plaintiffs' Motion to Proceed *In Forma Pauperis* ("IFP"). Dkt. Nos. 1, 2.

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Only Ms. Richards-Nurse submitted financial information in support of the IFP application. Dkt. No. 2. Plaintiffs subsequently submitted an Amended Complaint on May 8, 2026. Dkt. No. 7.

On May 21, 2026, the Court denied the IFP Motion without prejudice. Dkt. No. 9. Although Ms. Richards-Nurse indicated that she was employed, she left blank the portions of the application requesting her gross and net wages. *Id.* Ms. Burton did not submit any financial information from which the Court could determine whether she had the ability to pay the complaint filing fee. *Id.* The Court explained that, although two Plaintiffs had submitted the Complaint, only Ms. Richards-Nurse had submitted a financial affidavit. *Id.*

The Court noted that, because there were two Plaintiffs in the action, Ms. Burton was required to pay the complaint filing fee if she possessed sufficient funds to do so, even if Ms. Richards-Nurse did not have the ability to pay. *Id.* Moreover, without complete financial information from each Plaintiff, the Court could not determine whether both Plaintiffs qualified to proceed *in forma pauperis*. *Id.* Accordingly, the May 21, 2026 Order provided Plaintiffs with two alternatives to cure their deficiencies: Plaintiffs could pay the \$405.00 filing fee by June 26, 2026, or, if neither Plaintiff had the ability to pay the complaint filing fee, each Plaintiff was required to submit a completed IFP application by June 12, 2026. *Id.* The Court expressly advised Plaintiffs that failure to comply with the Order may result in a recommendation to the District Judge that the action be dismissed. *Id.*

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The Clerk's Office sent the May 21, 2026 Order to each Plaintiff by certified mail, return receipt requested. Dkt. Nos. 11, 12. The certified mail return receipts reflect that Ms. Burton received the Order on May 28, 2026, and Ms. Richards-Nurse received the Order on June 9, 2026. Dkt. Nos. 13, 14. Thus, both Plaintiffs received notice of the deficiencies in their IFP submission, the actions required to proceed with this case, and the possible consequence of failing to comply.

Neither Plaintiff submitted a completed IFP application by June 12, 2026, and Plaintiffs did not pay the complaint filing fee by June 26, 2026. Therefore, on July 8, 2026, the Court entered an Order to Show Cause directing both Plaintiffs to appear in person on July 22, 2026, and explain why the Court should not recommend that the Amended Complaint be dismissed for failure to satisfy the complaint filing-fee requirement in compliance with the May 21, 2026 Order. Dkt. No. 15.

The Clerk's Office mailed the Order to Show Cause by certified mail to the addresses Plaintiffs had provided to the Court. Dkt. Nos. 16, 17. Those were the same addresses at which Plaintiffs had previously received and signed for Court correspondence, and neither Plaintiff notified the Court of a change of address. *See* Dkt. Nos. 8, 10, 13, 14. At the July 22, 2026 show cause hearing, neither Plaintiff appeared when the Court convened the hearing. However, the return receipts for the July 8, 2026 Order, subsequently filed on the docket, reflect that Ms. Burton signed for her certified mail on July 31, 2026, and Ms. Richards-Nurse signed for her certified mail on August 3, 2026. Dkt. Nos. 21, 22. Thus, because the return

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receipts indicate that the Plaintiffs did not sign for the certified mail containing the Order to Show Cause until after the hearing, the Court makes clear that it does not rely on their failure to attend the Show Cause Hearing as the sole independent basis for recommending dismissal. The fact remains that, as of the entry of this Report and Recommendation, neither Plaintiff has paid the complaint filing fee, submitted a completed IFP application, requested additional time, or otherwise responded to the May 21, 2026 Order, and that is a sufficient basis on its own to recommend dismissal.

DISCUSSION

Pursuant to 28 U.S.C. § 1914(a), a party instituting a civil action must pay the prescribed filing fee. A litigant who is unable to prepay the required fees may seek leave to proceed in forma pauperis under 28 U.S.C. § 1915(a)(1). To do so, the litigant must submit an affidavit that includes a statement of all assets and demonstrates an inability to pay the required fees. 28 U.S.C. § 1915(a)(1).

The May 21, 2026 Order provided Plaintiffs with two avenues by which this action could proceed: they could pay the complaint filing fee or, if neither Plaintiff had the ability to do so, each could submit a completed IFP application. Dkt. No. 9. Plaintiffs pursued neither option.

Courts have taken two approaches when confronted with litigants who have neither paid the complaint filing fee nor submitted proper IFP applications. Some courts have dismissed such actions without prejudice on that basis alone. Other courts have considered

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the factors set forth in *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863, 868 (3d Cir. 1984), and dismissed the actions for failure to prosecute or comply with court orders. Out of an abundance of caution, the Court will consider both grounds, which lead to the same result: a recommendation that this action be dismissed without prejudice.

I. Dismissal Without Prejudice for Failure to Pay the Complaint Filing Fee or Submit Proper IFP Applications

Courts have dismissed actions without prejudice when a *pro se* litigant fails to pay the complaint filing fee or submit a proper application to proceed *in forma pauperis* after being provided an opportunity to do so. *See, e.g., Shingara v. Northumberland Cnty. Tax & Assessment Off.*, No. 4:24-CV-1799, 2025 WL 1345249, at *4 (M.D. Pa. Jan. 16, 2025), *report and recommendation adopted*, 2025 WL 1337550 (M.D. Pa. Feb. 5, 2025) (recommending dismissal without prejudice where non-prisoner plaintiffs failed to pay the complaint filing fee or submit proper IFP applications); *Newman v. Delaware*, No. 24-cv-0607, 2025 WL 1262368, at *2 n.3 (D. Del. May 1, 2025) (recognizing dismissal where a *pro se* plaintiff failed to pay the complaint filing fee or move to proceed *in forma pauperis*); *Parker v. Harrisburg City*, No. 1:17-CV-653, 2017 WL 3015880, at *2 (M.D. Pa. June 7, 2017), *report and recommendation adopted*, 2017 WL 3008583 (M.D. Pa. July 14, 2017) (recommending dismissal without prejudice where the plaintiff failed to file a completed IFP application after being provided an opportunity to do so); *cf. Banks v. Roe*, No. 17-cv-0038, 2025 WL 2306221, at *4 (D.V.I. Aug. 11, 2025) (dismissing a complaint based on the plaintiff's ineligibility to

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proceed *in forma pauperis* and failure to pay the complaint filing fee). The Third Circuit has likewise upheld dismissal where a plaintiff failed either to pay the complaint filing fee or file a completed IFP application. *Lindsey v. Roman*, 408 F. App'x 530, 532 (3d Cir. 2010).

Here, the May 21, 2026 Order gave Plaintiffs a meaningful opportunity to satisfy the complaint filing fee requirement. *See* Dkt. No. 9. The Order explained that Ms. Burton had not provided any financial information, and that Ms. Richards-Nurse had omitted her gross and net wages, despite indicating that she was employed by the Department of Education. *Id.* Without complete financial information from each Plaintiff, the Court could not determine whether both Plaintiffs qualified to proceed *in forma pauperis*. *Id.*

The Court directed Plaintiffs to pay the complaint filing fee by June 26, 2026, or, if neither Plaintiff could do so, required each Plaintiff to submit a completed IFP application by June 12, 2026. *Id.* The Order expressly warned Plaintiffs that failure to comply may result in a recommendation that this action be dismissed. *Id.* Both Plaintiffs received and signed for the Order. Dkt. Nos. 13, 14. Nevertheless, they neither paid the complaint filing fee nor submitted completed IFP applications.

Plaintiffs received actual notice of the deficiencies in their IFP submission, the actions necessary to satisfy the complaint filing-fee requirement, the applicable deadlines, and the possible consequence of noncompliance. To date, neither Plaintiff has paid the complaint filing fee, submitted a completed IFP application, requested additional time, or otherwise explained her failure to comply with the May 21, 2026 Order. They have failed to pursue

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either avenue for proceeding with this action. Therefore, Plaintiffs' failure to satisfy the complaint filing-fee requirement, despite notice and an opportunity to cure, warrants dismissal without prejudice.

II. Dismissal Without Prejudice for Failure to Prosecute and Comply with Court Orders

Courts have also dismissed actions for failure to prosecute or comply with court orders when a plaintiff neither pays the complaint filing fee nor submits a proper IFP application. *See, e.g., Harris v. Solane*, No. 24-cv-0069, 2025 WL 438206, at *1 (W.D. Pa. Jan. 8, 2025). The Third Circuit has affirmed dismissals for failure to prosecute where a plaintiff's IFP application was denied and the plaintiff did not thereafter pay the complaint filing fee, *Rizvi v. Maryland Department of Social Services*, 791 F. App'x 288, 289–90 (3d Cir. 2019), and where the plaintiff neither paid the complaint filing fee nor submitted the required affidavit supporting an IFP motion, *Rohn v. Johnston*, 415 F. App'x 353, 355 (3d Cir. 2011).

A district court's authority to dismiss an action *sua sponte* for failure to prosecute or comply with a court order derives from both Rule 41(b) of the Federal Rules of Civil Procedure and the court's inherent power and responsibility to manage its affairs "so as to achieve the orderly and expeditious disposition of cases." *Qadr v. Overmyer*, 642 F. App'x 100, 102 (3d Cir. 2016) (per curiam). Whether to dismiss an action for failure to prosecute rests within the sound discretion of the district court. *Emerson v. Thiel College*, 296 F.3d 184, 190 (3d Cir. 2002).

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That discretion is guided by the six factors identified in *Poulis*:

(1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense.

Poulis, 747 F.2d at 868. No single factor is dispositive, and not all six factors must support dismissal. *Briscoe v. Klaus*, 538 F.3d 252, 263 (3d Cir. 2008). Rather, the Court must properly consider and balance the factors based on the record, while remaining mindful of the policy favoring disposition on the merits and treating dismissal as a last resort. *Hildebrand v. Allegheny County*, 923 F.3d 128, 132, 138 (3d Cir. 2019).

Pro se litigants are not excused from consideration under the *Poulis* factors. *Marin v. Biro*s, 663 F. App'x 108, 110 (3d Cir. 2016). While dismissal without prejudice is independently warranted based on Plaintiffs' failure to satisfy the complaint filing-fee requirement, the Court nevertheless considers the *Poulis* factors only as an alternative basis for consideration of whether dismissal remains appropriate.

A. Plaintiffs' Personal Responsibility

The first *Poulis* factor considers the extent to which the dilatory parties are personally responsible for the conduct at issue. *See Adams*, 29 F.3d at 873. Because Plaintiffs are

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proceeding *pro se*, they are personally responsible for complying with the Court's Orders and taking the steps necessary to advance this action. *See Colon v. Karnes*, No. 11-cv-1704, 2012 WL 383666, at *3 (M.D. Pa. Feb. 6, 2012) ("Plaintiff is proceeding *pro se*, and thus is responsible for his own actions.").

Both Plaintiffs received and signed for the Court's May 21, 2026 Order, which directed them either to pay the complaint filing fee or, if neither Plaintiff had the ability to pay, to each submit a completed IFP application. Dkt. Nos. 9, 13, 14. The Order also warned Plaintiffs that failure to comply might result in a recommendation that this action be dismissed. Dkt. No. 9. Nevertheless, Plaintiffs did not comply with either requirement, seek additional time, or otherwise communicate with the Court. This failure to comply is attributable solely to Plaintiffs. Accordingly, the first *Poullis* factor weighs in favor of dismissal.

B. Prejudice to the Defendant

The second *Poullis* factor examines prejudice to the adversary. Relevant considerations include "the irretrievable loss of evidence, the inevitable dimming of witnesses' memories[,] the excessive and possibly irremediable burdens or costs imposed on the opposing party," *Adams*, 29 F.3d at 874, and any burden that impedes a party's ability to prepare a complete litigation strategy. *Ware v. Rodale Press, Inc.*, 322 F.3d 218, 222 (3d Cir. 2003).

Here, the action has not proceeded beyond the threshold requirement that Plaintiffs pay the complaint filing fee or establish their entitlement to proceed *in forma pauperis*, and

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the Defendant has not been served or required to participate. Consequently, the record does not establish that the Defendant has suffered material prejudice from Plaintiffs' delay. Although continued delay could eventually interfere with the Defendant's ability to investigate and respond to Plaintiffs' claims, the present record does not demonstrate such prejudice. Accordingly, the Court views the second *Poulis* factor as neutral.

C. History of Dilatoriness

The third *Poulis* factor considers whether Plaintiffs have demonstrated a history of dilatoriness. Plaintiffs have failed to take the action necessary to satisfy the basic prerequisite for proceeding with this case: paying the complaint filing fee or submitting completed IFP applications from which the Court could determine whether they qualify to proceed without prepayment. Although this action has been pending for a relatively short period, Plaintiffs received the May 21, 2026 Order, allowed the applicable deadlines to pass, and have taken no action to cure the deficiencies, request additional time, or otherwise communicate with the Court. In fact, as of the date of this Report and Recommendation, Plaintiffs still have not complied with the May 21, 2026 Order by paying the complaint filing fee or filing completed IFP motions. The Court therefore concludes that Plaintiffs' conduct demonstrates a history of dilatoriness. Accordingly, the third *Poulis* factor weighs in favor of dismissal.

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D. Willfulness or Bad Faith

The fourth *Poulis* factor considers whether Plaintiffs' conduct was willful or undertaken in bad faith. Willfulness generally requires conduct involving intentional or self-serving behavior rather than mere negligence or inadvertence. *Adams*, 29 F.3d at 874.

Both Plaintiffs signed for the May 21, 2026 Order and therefore knew that they were required either to pay the complaint filing fee or submit completed IFP applications. Dkt. Nos. 9, 13, 14. They were also expressly warned that failure to comply may result in a recommendation of dismissal. Dkt. No. 9. Despite that notice, Plaintiffs took no action, requested no extension, and offered no explanation for their noncompliance. The record therefore indicates that Plaintiffs' continued inaction was willful rather than a product of inadvertence. Although the record does not support a finding of bad faith, it supports a finding of willfulness. Accordingly, the fourth *Poulis* factor weighs in favor of dismissal.

E. Effectiveness of Alternative Sanctions

The fifth *Poulis* factor considers the effectiveness of sanctions other than dismissal. The Court has already employed less drastic measures to obtain Plaintiffs' compliance. It denied the deficient IFP Motion without prejudice, explained how Plaintiffs could cure the deficiencies or otherwise satisfy the complaint filing-fee requirement, provided deadlines for compliance, and expressly warned Plaintiffs that failure to comply could result in dismissal.

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Moreover, monetary sanctions also would not appear to be an effective alternative. *See Brennan v. Clouse*, No. 11-cv-0146, 2012 WL 876228, at *3 (W.D. Pa. Mar. 14, 2012) (“Alternative sanctions, such as monetary penalties, are inappropriate as sanctions with indigent *pro se* parties.”). Ms. Richards-Nurse sought to proceed in forma pauperis, and the Court lacks complete financial information from either Plaintiff from which it could determine their ability to pay a monetary sanction. More importantly, Plaintiffs’ failure to respond to the Court’s deadlines and express warning of possible dismissal indicates that an additional sanction or Order would be unlikely to prompt compliance. *See Whitney v. Barkley*, No. 10-cv-1705, 2011 WL 1230351, at *2 (W.D. Pa. Feb. 9, 2011).

Under these circumstances, another Order to Show Cause or a lesser sanction is unlikely to be effective. Dismissal without prejudice is a comparatively limited sanction because it does not adjudicate Plaintiffs’ claims on the merits and does not prevent them from pursuing their claims in a properly commenced action. Accordingly, the fifth *Poulis* factor weighs in favor of dismissal.

F. Meritoriousness of the Claims

Finally, the sixth *Poulis* factor considers the potential meritoriousness of Plaintiffs’ claims. The standard applicable to a motion under Rule 12(b)(6) is used to determine whether a claim is meritorious for purposes of this factor. *Poulis*, 747 F.2d at 869–70. This action remains at its earliest stage. The Amended Complaint was lodged pending resolution of the complaint filing fee issue, the Defendant has not been served, and the Court has not

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conducted a screening analysis or otherwise determined whether Plaintiffs' allegations state plausible claims for relief. Accordingly, the sixth *Poulis* factor does not weigh either for or against dismissal.

The first, third, fourth, and fifth *Poulis* factors weigh in favor of dismissal, while the second and sixth factors do not weigh either for or against dismissal. The factors favoring dismissal outweigh the neutral factors. *See Hildebrand*, 923 F.3d at 132 ("None of the *Poulis* factors is alone dispositive, and . . . not all of the factors need to be satisfied to justify dismissal of a complaint for lack of prosecution."). In any event, this action cannot proceed unless Plaintiffs pay the complaint filing fee or establish their entitlement to proceed *in forma pauperis*—neither of which has occurred. Plaintiffs received clear instructions regarding the actions necessary to proceed, the applicable deadlines, and an express warning that dismissal could result from noncompliance, but they did not avail themselves of either avenue for satisfying the complaint filing-fee requirement. Accordingly, dismissal without prejudice is warranted for failure to prosecute and comply with the Court's Orders. *See Rohn*, 415 F. App'x at 355.

CONCLUSION

Accordingly, for the reasons set forth above, the Court respectfully **RECOMMENDS** that the Plaintiffs' Amended Complaint, Dkt. No. 7, be **DISMISSED WITHOUT PREJUDICE** for Plaintiffs' failure to pay the complaint filing fee or submit completed IFP applications and, alternatively, for failure to prosecute and comply with the Court's Orders.

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Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice, 28 U.S.C. § 636(b)(1), and must “specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection.” LRCi 72.3. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985).

The Clerk of Court shall send a copy of this Report and Recommendation to Plaintiffs by certified mail, return receipt requested.

ENTER:

Dated: August 12, 2026

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE