

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

Collins v. Smith

Collins · No. 2:24-cv-01229 SCR P · Decided August 22, 2025

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 FOR THE EASTERN DISTRICT OF
CALIFORNIA 9 10 BOBBY LEE COLLINS, No. 2:24-cv-01229 SCR P 11 Plaintiff, 12 v.
ORDER and 13 D. SMITH, et al., FINDINGS AND RECOMMENDATIONS 14 Defendants. 15
16 Plaintiff is incarcerated in state prison and proceeding pro se and in forma pauperis with a 17
civil rights action under 42 U.S.C. § 1983.

On June 11, 2025, the undersigned screened 18 plaintiff's complaint and found it failed to state
any cognizable claims for relief. (ECF No. 10.) 19 Plaintiff was granted thirty (30) days to file an
amended complaint. (Id. at 4.) Plaintiff was 20 further advised that failure to file an amended
complaint would result in the recommendation that 21 the action be dismissed pursuant to Rule
41(b) of the Federal Rules of Civil Procedure.

(Id.) 22 The time for plaintiff to amend his complaint has now passed, and plaintiff has not filed
23 an amended complaint or otherwise responded to the screening order. Accordingly, the 24
undersigned recommends that the action be dismissed for failure to prosecute and failure to 25
comply with a court order. See Fed. R. Civ. P. 41(b); Local Rule 110. 26 In recommending
dismissal, the court has considered: "(1) the public's interest in 27 expeditious resolution of
litigation; (2) the court's need to manage its docket; (3) the risk of 28 prejudice to the defendants;
(4) the public policy favoring disposition of cases on their merits; and 1 || (5) the availability of
less drastic alternatives." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th 2 | Cir.

1992) (citation omitted). 3 "The public's interest in expeditious resolution of litigation always
favors dismissal." 4 | *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999). The court's
need to manage its 5 || docket also weighs in favor of dismissal, particularly given the heavy
caseload in this District. 6 || The third factor is neutral given no defendants have appeared, but
"[u]nnecessary delay inherently 7 || increases the risk that witnesses' memories will fade and
evidence will become stale." 8 | *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir.

2002). The public policy favoring disposition 9 || of actions on the merits weighs against
dismissal, but when "standing alone... is not sufficient to 10 | outweigh the other four factors."
Leon v. IDX Sys. Corp., 464 F.3d 951, 961 (9th Cir. 2006). 11 | The undersigned has also
considered less drastic alternatives and concludes that dismissal without 12 || prejudice is
appropriate.

13 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly 14 | assign a district judge to this matter. 15 In addition, IT IS RECOMMENDED that the action be dismissed without prejudice for 16 | failure to prosecute, Fed. R. Civ. P. 41(b), and failure to comply with a court order, Local Rule 17 |} 110. 18 These findings and recommendations are submitted to the United States District Judge 19 | assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within twenty-one days 20 | after being served with these findings and recommendations, plaintiff may file written objections 21 | with the court. Such a document should be captioned “Objections to Magistrate Judges Findings 22 || and Recommendations.” Plaintiff is advised that failure to file objections within the specified 23 || time may waive the right to appeal the District Court’s order.

Martinez v. Ylst, 951 F.2d 1153 24 | (9th Cir. 1991). 25 || DATED: August 21, 2025 26) 27 SEAN C. RIORDAN 3g UNITED STATES MAGISTRATE JUDGE