

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Steven Oscar Austin v. Unknown

Austin v. Unknown · No. 1:25-cv-00903-EPG (PC) · Decided September 23, 2025

OPINION

Unknown

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 STEVEN OSCAR AUSTIN, Case No. 1:25-cv-00903-EPG (PC) 12 Plaintiff, ORDER TO
ASSIGN A DISTRICT JUDGE 13

v. FINDINGS AND RECOMMENDATIONS,

14 RECOMMENDING THAT THIS ACTION BE

UNKNOWN, DISMISSED, FOR FAILURE TO PAY THE

15 FILING FEE OR SUBMIT AN APPLICATION

Defendant.

TO PROCEED IN FORMA PAUPERIS,

16 FAILURE TO PROSECUTE, AND FAILURE

TO COMPLY WITH A COURT ORDER

17

18 OBJECTIONS, IF ANY, DUE WITHIN THIRTY

(30) DAYS

19 20 21 Plaintiff Steven Oscar Austin is a state prisoner proceeding pro se in this civil rights 22
lawsuit filed pursuant to 42 U.S.C. § 1983. (ECF Nos. 1, 2). When Plaintiff filed this case on July
23 21, 2025, he neither paid the filing fee for this action nor submitted an application to proceed in
24 forma pauperis (IFP). The Court issued an order on July 25, 2025, giving Plaintiff forty-five
days to either (1) submit a completed and signed IFP application or (2) pay the filing fee of \$405.
(ECF 25 No. 4). The Court warned Plaintiff that “[f]ailure to comply with this order will result in
dismissal 26 of this action.” (Id.) (emphasis omitted). The forty-five-day period has expired, and
Plaintiff has 27 failed to pay the filing fee, submit a completed and signed IFP application, or
otherwise respond 28 1 to the Court’s order. 2 Accordingly, the Court will recommend dismissal
based on Plaintiff’s failure to pay the 3 filing fee or file an IFP application, failure to prosecute
this case, and failure to comply with court 4 orders. In determining whether to dismiss a[n]
[action] for failure to prosecute or failure to 5 comply with a court order, the Court must weigh the

following factors: (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 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits. 8 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 912, 1260-61 (9th Cir. 1992)). 10 "The public's interest in expeditious resolution of litigation always favors dismissal." 11 *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). Therefore, the 12 first factor weighs in favor of dismissal. 13 As to the Court's need to manage its docket, "[t]he trial judge is in the best position to 14 determine whether the delay in a particular case interferes with docket management and the 15 public interest. . . . It is incumbent upon the Court to manage its docket without being subject to 16 routine noncompliance of litigants. . . ." *Id.* (citations omitted). Here, Plaintiff has failed to 17 respond to the Court's order to pay the filing fee or file an IFP application. (ECF No. 4). 18 Moreover, Plaintiff has filed nothing since he initiated this case on July 21, 2025. This failure to 19 respond is delaying the case and interfering with docket management, as the case cannot progress 20 without the filing fee being paid or Plaintiff being permitted to proceed IFP. See 28 U.S.C. 21 §§ 1914, 1915. Therefore, the second factor weighs in favor of dismissal. 22 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in and of itself to warrant dismissal." *Id.* (citing *Yourish*, 191 F.3d at 991). However, "delay 23 inherently increases the risk that witnesses' memories will fade and evidence will become stale," 24 *id.* at 643, and it is Plaintiff's failure to prosecute this case and comply with court orders that is 25 causing delay. Therefore, the third factor weighs in favor of dismissal. 26 As for the availability of lesser sanctions, given that Plaintiff has chosen not to prosecute 27 this action and has failed to comply with a court order, despite being warned of possible 28 1 | dismissal, there is little available to the Court besides dismissal which would constitute a 2 | satisfactory lesser sanction while protecting the Court from further unnecessary expenditure of its 3 || scarce resources. Notably, given the stage of these proceedings, the preclusion of evidence or 4 || witnesses is not available. Further, because the Court is recommending dismissal without 5 || prejudice, it has stopped short of recommending the harsher sanction of dismissal with prejudice. 6 Therefore, the fourth factor weighs in favor of dismissal. 4 Finally, because public policy favors disposition on the merits, this final factor weighs 7 g against dismissal. *Id.* 9 After weighing the factors, the Court finds that dismissal without prejudice is appropriate. Accordingly, IT IS ORDERED that the Clerk of Court is respectfully directed to assign a District Judge to this case. And IT IS RECOMMENDED that: 2

1. This action be dismissed, without prejudice, based on Plaintiffs failure to pay the filing fee or file an in forma pauperis application, failure to prosecute this case, and failure to comply with court orders; and
- Is 2. The Clerk of Court be directed to close this case. 16

These findings and recommendations are submitted to the United States District Judge 17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty (30) days 18 | after being served with these findings and recommendations, Plaintiff may file written objections 19 | with the Court.

Such a document should be captioned “Objections to Magistrate Judge’s Findings 20 | and Recommendations.” Any objections shall be limited to no more than fifteen (15) pages, 21 | including exhibits. Plaintiff is advised that failure to file objections within the specified time may 22 | result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 23 | 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). IT IS SO ORDERED. 24 25 | Dated: _ September 23, 2025 [sf ey —
UNITED STATES MAGISTRATE JUDGE
27 28