

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Alvarez v. Morris Shea Bridge Company

Alvarez · No. 1:24-cv-01487-KES-BAM · Decided May 28, 2025

SUMMARY

The United States District Court for the Eastern District of California vacated previously issued Findings and Recommendations recommending dismissal of Sergio Alvarez’s action against Morris Shea Bridge Company. The court explained that the Ninth Circuit had dismissed Alvarez’s appeal in a related case, so the appeal was no longer pending, and stated that the complaint would be screened under 28 U.S.C. § 1915(e)(2) before service.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 28, 2025
DOCKET	1:24-cv-01487-KES-BAM
DISPOSITION	vacated
PROCEDURAL POSTURE	Plaintiff filed a pro se, in forma pauperis fraud action. The court had issued findings and recommendations recommending dismissal because Plaintiff had previously pursued the same claim and an appeal from that earlier action remained pending. After the Ninth Circuit dismissed the earlier appeal, the court vacated the findings and recommendations and deferred screening of the complaint.
PRECEDENTIAL VALUE	unknown

TOPICS

- appellate procedure
- civil procedure
- mootness

PRACTICE AREAS

- civil procedure
- federal courts

QUESTIONS PRESENTED

1. Whether the findings and recommendations recommending dismissal should remain in effect after the Ninth Circuit dismissed the appeal in Plaintiff's earlier action.
2. Whether the court must screen Plaintiff's pro se, in forma pauperis complaint before issuing a summons.

HOLDINGS

1. Because the appeal in Plaintiff's earlier action was no longer pending, the court vacated the findings and recommendations that had recommended dismissal based on the pending appeal.
2. No summons would issue at that time because the court was required to screen the complaint under 28 U.S.C. § 1915(e)(2) before directing service.

FACTUAL BACKGROUND

Plaintiff alleged that, after being laid off, he wrote and signed a note authorizing the mailing of his paycheck, but Defendant changed the words on the note. He asserted a fraud claim against Morris Shea Bridge Company and sought \$100,000. Plaintiff had previously pursued the same claim in another action in the Eastern District of California.

PROCEDURAL HISTORY

Plaintiff filed this action on December 6, 2024. On February 5, 2025, the court issued findings and recommendations recommending dismissal based on Plaintiff's prior action and pending appeal. The Ninth Circuit dismissed that appeal on March 11, 2025, with the dismissal becoming effective April 1, 2025. The district court therefore vacated its findings and recommendations and stated that it would screen the complaint in due course.

DISPOSITION

vacated

CASES CITED

- United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980)
- Alvarez v. Morris Shea Bridge Company, Case No. 1:23-cv-01725-JLT-BAM

OPINION

Alvarez v. Morris Shea Bridge Company

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 SERGIO ALVAREZ, Case No. 1:24-cv-01487-KES-BAM 12 Plaintiff, ORDER
VACATING FINDINGS AND
RECOMMENDATIONS

13 v. (Doc. 4)

14 MORRIS SHEA BRIDGE COMPANY,

15 Defendant. 16

17 18 Plaintiff Sergio Alvarez (“Plaintiff”), proceeding pro se and in forma pauperis, filed this 19 civil action on December 6, 2024. (Doc. 1.) Plaintiff asserts a claim for fraud against Defendant 20 Morris Shea Bridge Company, alleging that he was “laid off and [he] wrote a note and sign to 21 mail [his] check and they change the words on the note.” (Id. at 6.) He seeks \$100,000.00. (Id. 22 at 5.) 23 On February 5, 2025, the undersigned issued Findings and Recommendations that 24 recommended this action be dismissed because Plaintiff previously pursued this same claim 25 before this Court in Alvarez v. Morris Shea Bridge Company, Case No. 1:23-cv-01725-JLT- 26 BAM,¹ and, although dismissed without prejudice, his appeal of that action remained pending 27

1 A court may take judicial notice of its own records. United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 28 1980) (“[A] court may take judicial notice of its own records in other cases.”). 1 before the Ninth Circuit Court of Appeals. 2 On March 11, 2025, while the Findings and Recommendations remained pending, the 3 Ninth Circuit dismissed Plaintiff’s appeal. (See Alvarez, Case No. 1:23-cv-01725-JLT-BAM,

4 Doc. 45.) That order became effective April 1, 2025. (Id.) Accordingly, because the appeal is no 5 longer pending, the Findings and Recommendations issued in this action are HEREBY 6 VACATED. 7 Plaintiff is reminded that the Court is required to screen complaints of pro se litigants 8 proceeding in forma pauperis pursuant to Title 28 of the United States Code section 1915(e)(2). 9 The Court must dismiss a complaint or portion thereof if the action is legally “frivolous or 10 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief 11 against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2) (B). As a result, no 12 summons will issue at this time. The Court will direct the United States Marshal to serve 13 Plaintiff’s complaint only after the Court has screened the complaint and determined that it 14 contains cognizable claims for relief against the named defendant. The Court will screen 15 Plaintiff’s complaint in due course. 16 IT IS SO ORDERED. 17 18 Dated: May 27, 2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

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