

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Frederick S. Cato v. Hernandez, et al.

Cato v. Hernandez · No. 2:23-cv-2560 AC P · Decided December 11, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Frederick S. Cato’s 42 U.S.C. § 1983 action without prejudice under Federal Rule of Civil Procedure 41(b) because he failed to oppose defendants’ motion for summary judgment or respond to a court order. The magistrate judge applies the Ninth Circuit’s five-factor failure-to-prosecute test and orders the clerk to randomly assign a district judge.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 11, 2025
DOCKET	2:23-cv-2560 AC P
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se under 42 U.S.C. § 1983, failed to oppose defendants' pending motion for summary judgment or comply with an order directing him to respond. The magistrate judge issued findings and recommendations that the action be dismissed without prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b).
STANDARD OF REVIEW	Dismissal for failure to prosecute under Federal Rule of Civil Procedure 41(b) is evaluated by balancing the five Ferdik factors: the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to defendants, the public policy favoring disposition on the merits, and the availability of less drastic alternatives.
PRECEDENTIAL VALUE	Nonprecedential magistrate judge findings and recommendations; not a final disposition by the district court.

PARTIES

Frederick S. Cato v. Hernandez, et al.

TOPICS

civil procedure

section 1983

sanctions

summary judgment

PRACTICE AREAS

civil rights

civil procedure

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) because plaintiff failed to oppose defendants' motion for summary judgment and failed to comply with the court's order requiring a response.
2. Whether the five factors governing dismissal for failure to prosecute favored dismissal in the circumstances presented.

HOLDINGS

1. The action should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) because plaintiff failed to participate in the litigation, failed to respond to the motion for summary judgment, and failed to comply with the court's order.

KEY QUOTATIONS

“In recommending this action be dismissed for failure to prosecute, the court has considered “(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 the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.”” (at 2)

FACTUAL BACKGROUND

Plaintiff is a state prisoner proceeding pro se in a civil rights action under 42 U.S.C. § 1983. Defendants moved for summary judgment, but plaintiff neither opposed the motion nor complied with the court's subsequent order requiring a response within twenty-one days. The court determined that the action could not proceed without plaintiff's participation and that the relevant dismissal factors favored dismissal.

PROCEDURAL HISTORY

Defendants filed a motion for summary judgment on September 5, 2025. After plaintiff failed to respond, the court ordered him to file an opposition or statement of non-opposition within twenty-one days and warned that noncompliance would result in a recommendation of dismissal. Plaintiff did not respond, and the magistrate judge recommended dismissal without prejudice and directed that a district judge be randomly assigned.

DISPOSITION

CASES CITED

- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 FREDERICK S. CATO, No. 2:23-cv-2560 AC P 12 Plaintiff, 13 v. ORDER
AND FINDINGS AND RECOMMENDATIONS 14 HERNANDEZ, et al., 15 Defendants. 16 17
Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 18 U.S.C. §
1983.

On September 5, 2025, defendants filed a motion for summary judgment. ECF 19 No. 28. Plaintiff
has not opposed the motion. On October 21, 2025, plaintiff was ordered to file 20 an opposition or
a statement of non-opposition to the pending motion within twenty-one days. 21 ECF No. 32.

In the same order, plaintiff was informed that failure to file an opposition would 22 result in a
recommendation that this action be dismissed without prejudice for failure to prosecute 23
pursuant to Federal Rule of Civil Procedure 41(b). *Id.* The twenty-one-day period has now 24
expired, and plaintiff has not filed a response to the motion for summary judgment or otherwise 25
responded to the court's order.

In recommending this action be dismissed for failure to prosecute, 26 the court has considered “(1)
the public's interest in expeditious resolution of litigation; (2) the 27 court's need to manage its
docket; (3) the risk of prejudice to the defendants; (4) the public policy 28 favoring disposition of
cases on their merits; and (5) the availability of less drastic 1 || alternatives.” *Ferdik v. Bonzelet*,
963 F.2d 1258, 1260-61 (9th Cir.

1992) (citation 2 || omitted). Because this case cannot move forward without plaintiffs
participation, the court finds 3 || the factors weigh in favor of dismissal. 4 For the foregoing
reasons, IT IS HEREBY ORDERED that the Clerk of the Court shall 5 || randomly assign a United
States District Judge to this action. 6 IT IS HEREBY RECOMMENDED that this action be
dismissed without prejudice 7 || pursuant to Federal Rule of Civil Procedure 41(b).

8 These findings and recommendations are submitted to the United States District Judge 9 ||
assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 10
|| after being served with these findings and recommendations, any party may file written 11 ||
objections with the court and serve a copy on all parties. Such a document should be captioned 12

|| “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the 13 || objections shall be filed and served within fourteen days after service of the objections.

The 14 | parties are advised that failure to file objections within the specified time may waive the right to 15 || appeal the District Court’s order. *Martinez v. YIst*, 951 F.2d 1153 (9th Cir. 1991). 16 | DATED: December 11, 2025.. 17 thin Lhar—e_ 18 ALLISON CLAIRE UNITED STATES MAGISTRATE JUDGE 19 20 21 22 23 24 25 26 27 28