

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

OPINION

Hernandez

PER CURIAM.

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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. Ylst, 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