

1 the June Order and affording plaintiff an opportunity to file a First Amended
2 Complaint within twenty (20) days if he wished to proceed with this action.¹ The
3 June Order further expressly advised plaintiff that the failure timely to file a First
4 Amended Complaint may result in the dismissal of this action with or without
5 prejudice on the grounds set forth in the June Order and/or for failure diligently to
6 prosecute. To date, although the foregoing deadline has expired, plaintiff has failed
7 to file a First Amended Complaint or to seek an extension of time to do so.

8 In light of the foregoing, on July 25, 2013, the Magistrate Judge issued an
9 Order to Show Cause (“OSC”) directing plaintiff, by August 8, 2013, to show cause
10 in writing why this action should not be dismissed based upon the deficiencies in
11 the Complaint identified in the June Order and/or based upon plaintiff’s failure to
12 prosecute. The OSC expressly cautioned plaintiff that the failure timely to comply
13 with the OSC and/or to show good cause would result in the dismissal of this action
14 based upon the deficiencies identified in the June Order, plaintiff’s failure to
15 prosecute, and/or plaintiff’s failure to comply with the OSC. To date, plaintiff has
16 failed to file a response to the OSC, and the deadline to do so has now expired.

17 It is well-established that a district court has authority to dismiss a plaintiff’s
18 action because of his failure to prosecute or to comply with court orders. See Fed.
19 R. Civ. P. 41(b); Link v. Wabash Railroad Co., 370 U.S. 626, 629-30 (1962);p;
20 Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.), cert. denied, 506 U.S. 915
21 (1992). In determining whether to dismiss an action for failure to prosecute or
22 failure to comply with court orders, a district court must consider several factors:
23 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need
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25 ¹Specifically, the Magistrate Judge advised plaintiff, albeit in greater detail and with
26 citation to authorities, that: (1) defendants, to the extent sued in their official capacities, were
27 immune from suit on the Section 1983 claims; (2) plaintiff had failed to state a viable Section
28 1983 claim against defendants, to the extent sued in their individual capacities; and (3) absent a
viable Section 1983 claim against any defendant, the Court was without supplemental
jurisdiction to consider plaintiff’s state law claims.

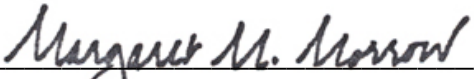
1 to manage its docket; (3) the risk of prejudice to defendants; (4) the public policy
2 favoring disposition of cases on their merits; and (5) the availability of less drastic
3 alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to
4 prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).

5 The Court finds that the first two factors – the public’s interest in
6 expeditiously resolving this litigation and the Court’s interest in managing the
7 docket, weigh in favor of dismissal. The Court cannot hold this case in abeyance
8 indefinitely awaiting plaintiff’s response to the Court’s directives. The third factor,
9 risk of prejudice to defendants, also weighs in favor of dismissal since a
10 presumption of injury arises from the occurrence of unreasonable delay in
11 prosecuting an action. Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th Cir.
12 1976). The fourth factor, the public policy favoring disposition of cases on their
13 merits, is greatly outweighed by the factors in favor of dismissal discussed herein.
14 Finally, as plaintiff has already been cautioned of the consequences of his failure to
15 prosecute and his failure to comply with the OSC, has been afforded the
16 opportunity to do so, and has not responded, no sanction lesser than dismissal
17 without prejudice is feasible.

18 IT IS THEREFORE ORDERED that this action is dismissed based upon
19 plaintiff’s failure to prosecute and failure to comply with the OSC.

20 IT IS SO ORDERED.

21 DATED: September 10, 2013

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25 HONORABLE MARGARET M. MORROW
26 UNITED STATES DISTRICT JUDGE
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