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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

CLEAVE McCLOUD,  
Plaintiff,  
v.  
LT. WADDLE,  
Defendant.

Case No. 1:11-cv-01678-DAD-BAM-PC  
FINDINGS AND RECOMMENDATIONS  
THAT THIS ACTION BE DISMISSED FOR  
FAILURE TO PROSECUTE AND TO OBEY  
A COURT ORDER  
(ECF NO. 40, 43)  
OBJECTIONS DUE IN FOURTEEN DAYS

Plaintiff Cleave McCloud is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 2, 2016, an order was entered, directing Plaintiff to either file an opposition or statement of non-opposition to Defendant’s motion for summary judgment. (ECF No. 40.) Plaintiff was granted a thirty-day extension of time. Plaintiff failed to respond to the order within the thirty day period, and on May 17, 2016, an order to show cause was entered, directing Plaintiff to show cause within fourteen days why this action should not be dismissed for his failure to prosecute and to obey a court Order. (ECF No. 43.) Plaintiff was specifically cautioned that his failure to comply would result in dismissal, with prejudice, for failure to prosecute and to obey a court order. (ECF No. 43 at 2:12.) Plaintiff has not filed a response to the order to show cause.

1 The Court has the inherent power to control its docket and may, in the exercise of that  
2 power, impose sanctions where appropriate, including dismissal of the action. Bautista v. Los  
3 Angeles Cnty., 216 F.3d 837, 841 (9th Cir. 2000). In determining whether to dismiss an action,  
4 the Court must weigh “(1) the public’s interest in expeditious resolution of the litigation; (2) the  
5 Court’s need to manage its own docket; (3) the risk of prejudice to the defendants; (4) the public  
6 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
7 sanctions.” In re Phenylpropanolamine (PPA) Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir.  
8 2006)(internal quotations and citations omitted). These factors guide a court in deciding what to  
9 do, and are not conditions that met be met in order for a court to take action. Id. (citation  
10 omitted).

11 Here, the Court finds that the public’s interest in expeditiously resolving this litigation  
12 and the Court’s interest in managing the docket weight in favor of dismissal. The third factor,  
13 risk of prejudice to Defendants, also weighs in favor of dismissal, since a presumption of injury  
14 arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air  
15 West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy favoring disposition  
16 of cases on the merits – is greatly outweighed by the factors in favor of dismissal discussed  
17 herein. Finally, a court’s warning to a party that his failure to obey the court’s order will result  
18 in dismissal satisfies the “consideration of alternatives” requirement. Ferdik v. Bonzelet, 963  
19 F.2d 1258, 1262 (9th Cir. 1992); Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995).

20 Based on Plaintiff’s failure to comply with or otherwise respond to the Court’s order, IT  
21 IS RECOMMENDED that this action be dismissed for Plaintiff’s failure to prosecute and to  
22 obey a court order.

23 These findings and recommendations are submitted to the United States District Judge  
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). Within **fourteen**  
25 **days** after being served with these findings and recommendations, Plaintiff may file written  
26 objections with the Court. Such a document should be captioned “Objections to Magistrate  
27 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections  
28 within the specified time waives all objections to the judge’s findings of fact. See Turner v.

1 Duncan 158 F.3d 449, 455 (9th Cir. 1988). Failure to file objections within the specified time  
2 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
3 Cir. 1991).

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5 IT IS SO ORDERED.

6 Dated: June 14, 2016

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE

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