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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HALIKI GREEN,  
Plaintiff,  
v.  
THERESA CISNEROS, et al.,  
Defendants.

Case No. 1:22-cv-01072-ADA-HBK (PC)  
FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION WITHOUT PREJUDICE<sup>1</sup>  
14-DAY DEADLINE

Plaintiff Haliki Green is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action. For the reasons set forth below, the undersigned recommends that the District Court dismiss this action without prejudice for Plaintiff’s failure to comply with a court order and prosecute this action.

**BACKGROUND**

Plaintiff initiated this action by filing a civil rights complaint under 42 U.S.C. § 1983. (Doc. No. 1, “Complaint”). On September 29, 2023, pursuant to 28 U.S.C. § 1915A the Court issued a screening order finding the Complaint failed to state a federal claim against any Defendant. (*See generally* Doc. No. 10). The Court afforded Plaintiff three options to exercise no later than October 31, 2023: (1) file an amended complaint; (2) file a notice that he intends to

<sup>1</sup> This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

1 stand on his Complaint subject to the undersigned recommending the district court dismiss for  
2 reasons stated in the September 29, 2023 Screening Order; or (3) file a notice to voluntarily  
3 dismiss this action, without prejudice, under Federal Rule of Civil Procedure 41(a)(1) because no  
4 defendant had yet been served. (*Id.* at 7-8). Plaintiff was required to deliver his response to the  
5 Court’s Screening Order to correctional officials for mailing no later than November 3, 2023. (*Id.*  
6 at 8 ¶ 1).

7 The Court expressly warned Plaintiff that if he “fails to timely respond to this Court Order  
8 or seek an extension of time to comply” the undersigned “will recommend that the district court  
9 dismiss this case as a sanction for Plaintiff’s failure to comply with a court order and prosecute  
10 this action.” (*Id.* ¶ 2). As of the date of this of this Findings and Recommendation, Plaintiff has  
11 failed to exercise any of the three options from the Court’s Screening Order, or request an  
12 extension of time to comply, and the time to do so has expired.<sup>2</sup> (*See* docket.)

## 13 APPLICABLE LAW AND ANALYSIS

### 14 A. Legal Standard

15 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action  
16 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court  
17 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889  
18 (9th Cir. 2019) (citations omitted). Similarly, this Court’s Local Rules, which correspond with  
19 Federal Rule of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with . . .  
20 any order of the Court may be grounds for the imposition by the Court of any and all sanctions  
21 . . . within the inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent  
22 power to control their dockets” and, in exercising that power, may impose sanctions, including  
23 dismissal of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th  
24 Cir. 1986). A court may dismiss an action based on a party’s failure to prosecute an action, obey  
25 a court order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61  
26 (9th Cir. 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone*

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28 <sup>2</sup> As of the date of these Findings and Recommendation, 20 days have passed for Plaintiff to deliver his response to correctional officials for mailing, providing sufficient time for mailing.

1 v. *U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with  
2 a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure  
3 to prosecute and to comply with local rules). In determining whether to dismiss an action, the  
4 Court must consider the following factors: (1) the public’s interest in expeditious resolution of  
5 litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants;  
6 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less  
7 drastic sanctions. *Henderson*, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir.  
8 1988).

### 9 **B. Analysis**

10 After considering each of the above-stated factors, the undersigned concludes dismissal  
11 without prejudice is warranted in this case. As to the first factor, the expeditious resolution of  
12 litigation is deemed to be in the public interest, satisfying the first factor. *Yourish v. California*  
13 *Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999).

14 Turning to the second factor, this Court’s need to efficiently manage its docket cannot be  
15 overstated. This Court has “one of the heaviest caseloads in the nation,” and due to the delay in  
16 filling judicial vacancies, which was further exacerbated by the COVID-19 pandemic, operates  
17 under a declared judicial emergency. *See* Amended Standing Order in Light of Ongoing Judicial  
18 Emergency in the Eastern District of California. This Court’s time is better spent on its other  
19 matters than needlessly consumed managing a case with a recalcitrant litigant. The Court cannot  
20 effectively manage its docket when a litigant ceases to litigate his/her case or respond to a court  
21 order. Thus, the Court finds that the second factor weighs in favor of dismissal.

22 Delays inevitably have the inherent risk that evidence will become stale or witnesses’  
23 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third  
24 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor—risk of prejudice  
25 to defendant—weighs in favor of dismissal since a presumption of injury arises from the  
26 unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir.  
27 1976). Because Plaintiff’s inaction amounts to an unreasonable delay in prosecuting this action,  
28 the third factor weighs in favor of dismissal.

1           The fourth factor usually weighs against dismissal because public policy favors the  
2 disposition of cases on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).  
3 However, “this factor lends little support to a party whose responsibility it is to move a case  
4 toward disposition on the merits but whose conduct impedes progress in that direction,” which is  
5 the case here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217,  
6 1228 (9th Cir. 2006) (citation omitted). Indeed, “trial courts do not have time to waste on  
7 multiple failures by aspiring litigants to follow the rules and requirements of our courts.”  
8 *Pagtalunan*, 291 F.3d at 644 (Trott, J., concurring in affirmance of district court’s involuntary  
9 dismissal with prejudice of habeas petition where petitioner failed to timely respond to court  
10 order and noting “the weight of the docket-managing factor depends upon the size and load of the  
11 docket, and those in the best position to know what that is are our beleaguered trial judges.”).  
12 Further, as set forth in the Screening Order, the Court already determined that the Complaint, as  
13 pled, failed to state a claim, so this factor does not weigh in favor of the Plaintiff.

14           Finally, the Court’s warning to a party that failure to obey the court’s order will result in  
15 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;  
16 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court’s September 29, 2023  
17 Order expressly warned Plaintiff that his failure to comply with the Court’s order would result in  
18 a recommendation for dismissal of this action. (Doc. 10 at 8 ¶ 2). Thus, Plaintiff had adequate  
19 warning that dismissal could result from his noncompliance. And the instant dismissal is a  
20 dismissal *without* prejudice, which is a lesser sanction than a dismissal with prejudice, thereby  
21 satisfying the fifth factor.

22           After considering the factors set forth *supra* and binding case law, the undersigned  
23 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41(b) and Local Rule 110.

24           Accordingly, it is hereby **RECOMMENDED**:

25           This action be **DISMISSED** without prejudice for Plaintiff’s failure to obey court orders  
26 and failure to prosecute.

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