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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KELVIN X. SINGLETON,  
Plaintiff,  
v.  
S. GATES, et al.,  
Defendants.

Case No. 2:19-cv-08908-RGK-JC

MEMORANDUM OPINION AND  
ORDER DISMISSING ACTION

**I. BACKGROUND AND SUMMARY**

On October 16, 2019, plaintiff Kelvin X. Singleton, who is in state custody, is proceeding *pro se*, and has been granted leave to proceed without prepayment of the filing fee, filed a Civil Rights Complaint (“Original Complaint”) pursuant to 42 U.S.C. § 1983 (“Section 1983”), against the following defendants at California State Prison – Los Angeles County (“CSP-LAC”) in their individual and official capacities: (1) S. Gates, Chief of Health Care Correspondence and Appeals Branch; (2) M. Lewis, Chief Physician and Surgeon; (3) B. Ramos, Chief Medical Executive; (4) A. Galstian (erroneously sued as A. Galstain), Chief Executive Officer; and (5) M. Nawaz, Primary Care Physician. (Docket No. 1). On September 4, 2020, the Court granted defendant’s Motion to Dismiss the Original

1 Complaint, but afforded plaintiff leave to amend. (Docket No. 53).

2 On September 25, 2020, plaintiff filed a First Amended Complaint (“First  
3 Amended Complaint” or “FAC”), asserting Eighth Amendment claims against the  
4 same five defendants in their individual and official capacities. (Docket No. 54).

5 On July 2, 2021, this Court granted in part defendant’s Motion to Dismiss the First  
6 Amended Complaint and dismissed the First Amended Complaint as against  
7 defendants in their official capacities with leave to amend (“July Order”). (Docket  
8 No. 69). The July Order directed plaintiff within twenty (20) days (*i.e.*, by July 22,  
9 2021), to do one of the following: (1) file a Second Amended Complaint; (2) file a  
10 Notice of Intent to Proceed Solely Against Defendants in Their Individual  
11 Capacities; or (3) file a Notice of Dismissal. (Docket No. 69). The July Order  
12 expressly cautioned plaintiff in bold-faced print that **his failure timely to file a  
13 Second Amended Complaint, a Notice of Intent to Proceed Solely Against  
14 Defendants in Their Individual Capacities, or a Notice of Dismissal may result  
15 in the dismissal of this action with or without prejudice for failure diligently to  
16 prosecute and/or for failure to comply with the July Order.**

17 The foregoing July 22, 2021 deadline expired without any action by plaintiff.  
18 Plaintiff has not sought an extension of the foregoing deadline or otherwise  
19 communicated with the Court since the issuance of the July Order.

20 As discussed below, this action is dismissed due to plaintiff’s unreasonable  
21 failure to prosecute and his failure to comply with the July Order.

## 22 **II. PERTINENT LAW**

23 It is well-established that a district court may *sua sponte* dismiss an action  
24 where the plaintiff has failed to comply with a court order and/or unreasonably  
25 failed to prosecute. See Link v. Wabash Railroad Co., 370 U.S. 626, 629-33  
26 (1962); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.) (as amended), cert.  
27 denied, 506 U.S. 915 (1992); see also McKeever v. Block, 932 F.2d 795, 797 (9th  
28 Cir. 1991) (district court may *sua sponte* dismiss action “only for an unreasonable

1 failure to prosecute”) (citations omitted); see also Edwards v. Marin Park, Inc., 356  
2 F.3d 1058, 1065 (9th Cir. 2004) (*sua sponte* dismissal pursuant to Fed. R. Civ. P.  
3 41(b) proper sanction in cases where a plaintiff is notified of deficiencies in  
4 complaint and is given “the opportunity to amend [the complaint] or be dismissed”  
5 but the plaintiff “[does] *nothing*”) (citations omitted; emphasis in original).

6 In determining whether to dismiss an action for failure to prosecute or failure  
7 to comply with court orders, a district court must consider several factors, namely  
8 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need  
9 to manage its docket; (3) the risk of prejudice to defendants; (4) the public policy  
10 favoring disposition of cases on their merits; and (5) the availability of less drastic  
11 alternatives. See In re Eisen, 31 F.3d 1447, 1451 (9th Cir. 1994) (failure to  
12 prosecute); Ferdik, 963 F.2d at 1260-61 (failure to comply with court orders).  
13 Dismissal is appropriate under the foregoing analysis “where at least four factors  
14 support dismissal . . . or where at least three factors ‘strongly’ support dismissal.”  
15 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998) (citations  
16 omitted).

17 Where a plaintiff is proceeding *pro se*, however, the court must first notify  
18 the plaintiff of the deficiencies in the complaint so that the plaintiff has an  
19 opportunity “to amend effectively.” Ferdik, 963 F.2d at 1261 (citation omitted). A  
20 district judge may not dismiss an action for failure to comply with a court order or  
21 for unreasonable failure to prosecute if the initial decision to dismiss a complaint  
22 was erroneous. Yourish v. California Amplifier, 191 F.3d 983, 992 (9th Cir. 1999)  
23 (citing id.).

### 24 **III. DISCUSSION AND ORDER**

25 First, the July Order was not erroneous and adequately and properly notified  
26 plaintiff of the deficiencies in the official capacity claims in the First Amended  
27 Complaint and afforded him an opportunity to amend effectively.

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1 Second, dismissal is appropriate based upon plaintiff's failure to comply  
2 with the July Order and the failure to prosecute. The Court has considered the five  
3 factor discussed above – the public's interest in expeditious resolution of litigation,  
4 the court's need to manage its docket, the risk of prejudice to defendants, the public  
5 policy favoring disposition of cases on their merits, and the availability of less  
6 drastic alternatives. The first two factors – the public's interest in expeditiously  
7 resolving this litigation and the Court's interest in managing the docket – strongly  
8 weigh in favor of dismissal. As noted above, plaintiff has been notified of the  
9 deficiencies in the official capacity claims in the First Amended Complaint and has  
10 been given the opportunity to amend them, to dismiss the First Amended  
11 Complaint, or to notify the Court that he wishes to stand on the remaining  
12 individual capacity claims in the First Amended Complaint. He has done nothing.  
13 See Edwards, 356 F.3d at 1065. The third factor, risk of prejudice to defendants,  
14 also weighs strongly in favor of dismissal. See Anderson v. Air West, Inc., 542  
15 F.2d 522, 524 (9th Cir. 1976) (prejudice to defendants presumed from  
16 unreasonable delay) (citation omitted). The fourth factor, the public policy  
17 favoring disposition of cases on their merits, is greatly outweighed by the factors in  
18 favor of dismissal discussed herein. As for the fifth factor, since plaintiff has  
19 already been cautioned of the consequences of his failure to prosecute and his  
20 failure to comply with the July Order, and plaintiff has been afforded the  
21 opportunity to avoid such consequences but has not responded, no sanction lesser  
22 than dismissal is feasible. See, e.g., Yourish, 191 F.3d at 989 (dismissal of action  
23 *with prejudice* not excessive sanction for plaintiffs' failure timely to comply with  
24 court's order to submit an amended complaint).

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1 IT IS THEREFORE ORDERED that this action is dismissed based upon  
2 plaintiff's unreasonable failure to prosecute and his failure to comply with the July  
3 Order – each of which constitutes an independent and adequate basis to support  
4 dismissal.

5 IT IS SO ORDERED.

6 DATED: August 24, 2021

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9 HONORABLE R. GARY KLAUSNER  
10 UNITED STATES DISTRICT JUDGE  
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