

1 dismissal of this action. Plaintiff did not file any objections to the Report and
2 Recommendation. However, on November 13, 2023, Plaintiff filed a Motion for Leave to
3 File Amended Complaint (“Motion to Amend”), suggesting that he has not in fact
4 abandoned this action and instead wishes to proceed.

5 This Court agrees with and adopts the facts and procedural history set out in
6 the Report and Recommendation, as well as its analysis, findings, and conclusions relative
7 to the deficiencies in the Complaint, and accordingly also accepts and adopts the Report
8 and Recommendation, to the extent it recommends that the Court grant the Motion and
9 dismiss the Complaint. However, in light of Plaintiff’s expression of interest in pursuing
10 this action and the otherwise applicable liberal amendment standards and standards
11 governing consideration of matters brought by self-represented individuals, the Court
12 deems it appropriate to afford Plaintiff leave to amend and accordingly declines to adopt
13 the Report and Recommendation, insofar as it recommends dismissal of the action based
14 on Plaintiff’s failure to prosecute and to comply with a court order.

15 IT IS THEREFORE ORDERED:

- 16 1. The Motion is granted and the Complaint is dismissed with leave to amend.
- 17 2. Within twenty-one (21) calendar days of the date of this Order, Plaintiff must
18 do one of the following:
 - 19 a) File a First Amended Complaint which cures the pleading defects set
20 forth in the Report and Recommendation; or
 - 21 b) File a Notice of Dismissal which will result in the voluntary
22 dismissal of this action without prejudice; or
 - 23 c) File a Notice of Intent to Stand on Complaint, indicating
24 Plaintiff’s intent to stand on the original Complaint despite the pleading defects set forth
25 in the Report and Recommendation, which may result in the dismissal of this action in its
26 entirety based upon such defects.

27 Plaintiff is cautioned that Plaintiff’s failure timely to file a First Amended
28 Complaint, a Notice of Dismissal, or a Notice of Intent to Stand on Complaint may be

1 deemed Plaintiff's admission that amendment is futile, and may result in the dismissal of
2 this action with or without prejudice based on the deficiencies in the Complaint identified
3 in the Report and Recommendation, based on the ground that amendment is futile, and/or
4 based on Plaintiff's failure diligently to prosecute and/or failure to comply with this Order.

5 4. In light of the foregoing, Plaintiff's Motion to Amend is moot and is
6 denied as such.

7
8 IT IS SO ORDERED.

9
10 Dated: March 26, 2024



11 HON. SHERILYN P. GARNETT
12 U.S. DISTRICT COURT JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28