

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

11 LAURA YBARRA 1:09-cv-001098-AWI-MJS (PC)

12 || Plaintiff,

## FINDINGS AND RECOMMENDATION FOR DISMISSAL OF PLAINTIFF'S COMPLAINT

14 A. ANDERSON, et al.

## Defendants.

**OBJECTIONS DUE WITHIN FOURTEEN  
(14) DAYS**

17 Plaintiff Laura Ybarra (“Plaintiff”) is a former state prisoner proceeding pro se and  
18 in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

19 Plaintiff initiated this action on June 22, 2009. (ECF No. 1.) On September 6, 2011,  
20 the Court issued an Order denying Defendant Anderson's motion to dismiss and granting  
21 Defendant Anderson's request to extend the dispositive motion deadline. On September  
22 14, 2011, the Court's Order was returned by the U.S. Postal Service as undeliverable to  
23 Plaintiff. More than 63 days have since passed, and Plaintiff has not provided the Court  
24 with a new address or otherwise responded.

25 Local Rule 110 provides that “failure of counsel or of a party to comply with these  
26 Rules or with any order of the Court may be grounds for imposition by the Court of any and  
27 all sanctions . . . within the inherent power of the Court.” District courts have the inherent  
28 power to control their dockets and “in the exercise of that power, they may impose

1 sanctions including, where appropriate . . . dismissal of a case." Thompson v. Housing  
2 Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice,  
3 based on a party's failure to prosecute an action, failure to obey a court order, or failure to  
4 comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)  
5 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61  
6 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of  
7 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to  
8 comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone  
9 v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply  
10 with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal  
11 for lack of prosecution and failure to comply with local rules).

12 In determining whether to dismiss an action for lack of prosecution, failure to obey  
13 a Court order, or failure to comply with local rules, the Court must consider several factors:  
14 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to  
15 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
16 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
17 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130;  
18 Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

19 In the instant case, the Court finds that the public's interest in expeditiously resolving  
20 this litigation and the Court's interest in managing the docket weigh in favor of dismissal.  
21 The third factor, risk of prejudice to the defendant, also weighs in favor of dismissal, since  
22 a presumption of injury arises from the occurrence of unreasonable delay in prosecuting  
23 an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --  
24 public policy favoring disposition of cases on their merits -- is greatly outweighed by the  
25 factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his  
26 failure to obey the court's order will result in dismissal satisfies the "consideration of  
27 alternatives" requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33;  
28 Henderson, 779 F.2d at 1424

Accordingly, it is **RECOMMENDED** that in the event that Plaintiff does not within **fourteen (14) days** of entry of this Order notify the Court in writing of her address to which mail is to be sent, this matter be **DISMISSED by the District Judge**.

4 These Findings and Recommendation are submitted to the United States District  
5 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).  
6 Within fourteen days after being served with these findings and recommendations, any  
7 party may file written objections with the court and serve a copy on all parties. Such a  
8 document should be captioned "Objections to Magistrate Judge's Findings and  
9 Recommendations." Any reply to the objections shall be served and filed within ten days  
10 after service of the objections. The parties are advised that failure to file objections within  
11 the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst,  
12 951 F.2d 1153 (9th Cir. 1991).

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15 IT IS SO ORDERED.

16 | Dated: December 1, 2011

1/s/ Michael J. Song  
UNITED STATES MAGISTRATE JUDGE