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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 ROBERT SIORDIA,  
12 Plaintiff,

13 v.

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15 MATTHEW CATE, et al.,  
16 Defendants.  
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**CASE No. 1:11-cv-00742-LJO-MJS (PC)**

**FINDINGS AND RECOMMENDATIONS  
DISMISSING ACTION WITH PREJUDICE  
FOR FAILURE TO OBEY COURT  
ORDERS AND FAILURE TO  
PROSECUTE**

**(ECF Nos. 31, 33)**

**FOURTEEN (14) DAY OBJECTION  
DEADLINE**

18 Plaintiff Robert Siordia is a state prisoner proceeding pro se and in forma  
19 pauperis in a civil rights action filed May 9, 2011 pursuant to 42 U.S.C. § 1983. (ECF  
20 No. 1.) This matter proceeds on the complaint's Eighth Amendment claim against  
21 Defendants Cate and Yates. (ECF No. 11.)

22 Defendants filed a motion for summary judgment on March 11, 2013.<sup>1</sup> (ECF No.  
23 27.) On April 24, 2013, Plaintiff was granted an extension of time to May 15, 2013 to file  
24 opposition or a statement of non-opposition. (ECF No. 31.) The May 15, 2013 deadline  
25 passed without Plaintiff responding or seeking an extension of time to do so. On July  
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27 <sup>1</sup> Pursuant to Woods v. Carey, 684 F.3d 934 (9th Cir. 2012) and Rand v. Rowland, 154 F.3d 952 (9th Cir.  
28 1998), Defendants notified Plaintiff of his rights, obligations and methods for opposing Defendants' motion.

1 29, 2013, Plaintiff was ordered to file opposition by not later than August 23, 2013. (ECF  
2 No. 33.) The August 23, 2013 deadline has passed without Plaintiff responding or  
3 seeking an extension of time to do so. Plaintiff has not obeyed the April 24, 2013 and  
4 July 29, 2013 orders.

5 Local Rule 110 provides that “failure of counsel or of a party to comply with these  
6 Rules or with any order of the Court may be grounds for imposition by the Court of any  
7 and all sanctions . . . within the inherent power of the Court.” District courts have the  
8 inherent power to control their dockets and “in the exercise of that power, they may  
9 impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v.  
10 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with  
11 prejudice, based on a party’s failure to prosecute, failure to obey a court order, or failure  
12 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)  
13 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-  
14 61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of  
15 a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for  
16 failure to comply with local rule requiring pro se plaintiffs to keep court apprised of  
17 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal  
18 for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424  
19 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

20 In determining whether to dismiss an action for lack of prosecution, failure to  
21 obey a court order, or failure to comply with local rules, the Court must consider several  
22 factors: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s  
23 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
24 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
25 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone,  
26 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

27 In the instant case, the public’s interest in expeditiously resolving this litigation  
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1 and the Court's interest in managing its docket weigh in favor of dismissal. The third  
2 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a  
3 presumption of injury arises from the occurrence of unreasonable delay in prosecuting  
4 this action which arose over two years ago. Anderson v. Air West, 542 F.2d 522, 524  
5 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their  
6 merits -- is greatly outweighed by the factors in favor of dismissal discussed herein.  
7 Finally, as for the availability of lesser sanctions, at this stage in the proceedings there  
8 is little available which would constitute a satisfactory lesser sanction while preserving  
9 scarce Court resources. Plaintiff has not paid the filing fee for this action and is likely  
10 unable to pay, making monetary sanctions of little use. Plaintiff has failed to oppose  
11 Defendants' motion for summary judgment notwithstanding repeated extensions of time  
12 to do so. It is reasonable to conclude Plaintiff is unable to make an evidentiary showing  
13 in opposition. See Fed. R. Civ. P. 56(e)(4); Local Rule 230(I). Plaintiff was warned that a  
14 failure to file an opposition or statement of non-opposition by the August 23, 2013  
15 deadline may result in the action being dismissed with prejudice. (ECF No. 33 at 2:7-  
16 12.)

17 Having balanced these factors, the undersigned finds they weigh in favor of  
18 dismissal and accordingly HEREBY RECOMMENDS that this action be DISMISSED  
19 WITH PREJUDICE based on Plaintiff's failure to obey the Court's orders and failure to  
20 prosecute.

21 These findings and recommendations will be submitted to the United States  
22 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §  
23 636(b)(I). Within fourteen (14) days after being served with these findings and  
24 recommendations, the parties may file written objections with the Court. The document  
25 should be captioned "Objections to Magistrate Judge's Findings and  
26 Recommendations." A party may respond to another party's objections by filing a  
27 response within fourteen (14) days after being served with a copy of that party's  
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1 objections. The parties are advised that 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  
3 (9th Cir. 1991).  
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6 IT IS SO ORDERED.

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8 Dated: August 29, 2013

/s/ Michael J. Seng  
9 UNITED STATES MAGISTRATE JUDGE  
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