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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

<p>DANNY ROMERO,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p style="padding-left: 100px;">v.</p> <p>JOHN N. KATAVICH, et al.</p> <p style="padding-left: 100px;">Defendants.</p>	<p>CASE NO. 1:11-cv-0935-LJO-MJS (PC)</p> <p>FINDINGS AND RECOMMENDATIONS FOR DISMISSAL OF PLAINTIFF'S COMPLAINT FOR FAILURE TO OBEY A COURT ORDER</p> <p>(ECF No. 13)</p> <p>OBJECTIONS DUE WITHIN FOURTEEN DAYS</p>
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Plaintiff Danny Romero ("Plaintiff") is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

The Court screened Plaintiff's Complaint on February 14, 2012, and found that it failed to state a cognizable claim, but gave Plaintiff an opportunity to file an amended complaint on or before March 19, 2012. (ECF No. 13.) The Court informed Plaintiff in this order that if he failed to file an amended complaint, his action would be "dismissed, with prejudice, for failure to state a claim." (Id.) March 19, 2012, passed without Plaintiff having filed an amended complaint or a request for an extension of time to do so.

The Court issued an Order to Show Cause on April 3, 2012, directing Plaintiff to file

1 an amended complaint or show cause why his case should not be dismissed for failure to  
2 comply with a court order and failure to state a claim. (ECF No. 14.) Plaintiff was to  
3 respond by April 30, 2012. (Id.) Plaintiff responded to the Order to Show Cause and  
4 requested that his time to file an amended complaint be extended. (ECF No. 15.) The  
5 Court granted this request and discharged the Order to Show Cause. (ECF Nos. 16 & 19.)  
6 Plaintiff then filed a second motion for an extension of time. (ECF No. 17.) The Court  
7 granted this motion and Plaintiff was to file an amended complaint by June 27, 2012. (ECF  
8 No. 18.) June 27, 2012 has passed and Plaintiff has once again failed to file an amended  
9 complaint by the extended and re-extended deadline.

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

25 In determining whether to dismiss an action for lack of prosecution, failure to obey  
26 a court order, or failure to comply with local rules, the Court must consider several factors:  
27 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to  
28 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring

1 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
2 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130;  
3 Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

4 In the instant case, the Court finds that the public's interest in expeditiously resolving  
5 this litigation and the Court's interest in managing its docket weigh in favor of dismissal.  
6 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a  
7 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an  
8 action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public  
9 policy favoring disposition of cases on their merits -- is greatly outweighed by the factors  
10 in favor of dismissal discussed herein. Finally, a court's warning to a party that his failure  
11 to obey the court's order will result in dismissal satisfies the "consideration of alternatives"  
12 requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson,  
13 779 F.2d at 1424. The Court's Screening Order expressly stated: "If Plaintiff fails to file an  
14 amended complaint in compliance with this order, this action will be dismissed, with  
15 prejudice, for failure to state a claim." (ECF No. 12.) Thus, Plaintiff had adequate warning  
16 that dismissal would result from his noncompliance with the Court's Order. The Court also  
17 gave Plaintiff numerous additional opportunities to file an amended complaint, and as of  
18 this date, Plaintiff has failed to respond to take advantage of any of the additional  
19 opportunities he was given.

20 Based on the foregoing, the Court RECOMMENDS that this action be DISMISSED  
21 based on Plaintiff's failure to obey a court order.

22 These Findings and Recommendations are submitted to the United States District  
23 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).  
24 Within fourteen (14) days after being served with these Findings and Recommendations,  
25 any party may file written objections with the Court and serve a copy on all parties. Such  
26 a document should be captioned "Objections to Magistrate Judge's Findings and  
27 Recommendations." The parties are advised that failure to file objections within the  
28 specified time may waive the right to appeal the District Court's order. Martinez v. Y1 st,

1 951 F.2d 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: August 8, 2012

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

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