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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ISABEL TUBACH,  
Plaintiff,  
v.  
JERRY BROWN, et al.,  
Defendants.

**Case No. 1:13-cv-00089-AWI-SMS (PC)**

**FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT THE COURT  
DISMISS THIS ACTION, WITHOUT  
PREJUDICE, FOR  
FAILURE TO PROSECUTE**

**Doc. 10**

Plaintiff Isabel Tubach (“Plaintiff”), a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”) proceeds *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint in this action on January 18, 2013. Doc. 1.

In the complaint, Plaintiff alleged that she was being physically and sexually abused and harassed in violation of the Eighth Amendment, but she did not identify any specific constitutional right that she believed was violated. The complaint failed to allege specific factual

1 details, including the dates on which the abuse and harassment occurred.

2 On January 6, 2014, to enable the Court to screen the complaint in compliance with 28  
3 U.S.C. § 1915A, this Court issued an order requiring Plaintiff to submit within thirty (30) days a  
4 more definite statement of facts. Doc. 9. The order warned Plaintiff that failure to comply might  
5 result in the action's being dismissed without further notice pursuant to Rule 41(b) of the Federal  
6 Rules of Civil Procedure.  
7

8 On February 19, 2014, after more than thirty days passed without any action by Plaintiff,  
9 the Court ordered her to show cause within fifteen days why this action should not be dismissed,  
10 warning her that this action would be dismissed if she failed to respond. Doc. 10. Although the  
11 fifteen-day deadline has expired, Plaintiff has not complied with or otherwise responded to either  
12 of the Court's orders.  
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14 The Court has the inherent power to control its docket and may, in the exercise of that  
15 power, impose sanctions where appropriate, including dismissal of the action. *Bautista v. Los*  
16 *Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000). In determining whether to dismiss an action,  
17 the Court must weigh “(1) the public’s interest in expeditious resolution of litigation; (2) the  
18 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
19 favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” *In*  
20 *re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir.  
21 2006), *quoting Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987). These factors  
22 guide a court in deciding how to proceed when a plaintiff fails to actively prosecute his or her  
23 case.  
24

25 Based on Plaintiff’s failure to comply with or otherwise respond to the above orders, the  
26 Court is left with no alternative but to dismiss the action for failure to prosecute. *Id.* This action  
27 cannot proceed without Plaintiff’s cooperation and compliance with the orders at issue.  
28

1           Accordingly, the undersigned recommends that this action be DISMISSED for failure to  
2 follow the Court's orders.

3           These findings and recommendations are submitted to the Honorable Anthony W. Ishii,  
4 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and  
5 Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of  
6 California. Within thirty (30) days after being served with a copy, Plaintiff may file written  
7 objections with the court, serving a copy on all parties. Such a document should be captioned  
8 "Objections to Magistrate Judge's Findings and Recommendations." The Court will then review  
9 the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636(b)(1)(C). Plaintiff advised that failure  
10 to file objections within the specified time may waive the right to appeal the District Court's  
11 order. *Martinez v. Ylst*, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).  
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16 IT IS SO ORDERED.

17 Dated: March 26, 2014

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

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