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

EUGENIO LUIS NOGUERAS,  
Plaintiff,  
v.  
OJUKWU,  
Defendant.

**Case No. 1:14-cv-00470-LJO-SKO (PC)**  
**FINDINGS AND RECOMMENDATION TO DISMISS WITH PREJUDICE FOR PLAINTIFF'S FAILURE TO COMPLY WITH THE COURT'S ORDERS AND FAILURE TO PROSECUTE THIS ACTION**  
**(Docs. 48, 50, 51)**  
**TWENTY-ONE (21) DAY DEADLINE**

Plaintiff, Eugenio Luis Nogueras, is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Defendants filed a motion to compel Plaintiff to respond to their discovery on January 14, 2016. (Doc. 44.) As Plaintiff failed to file an opposition or statement of non-opposition to Defendant’s motion to compel, an order issued on March 8, 2016, ordering Plaintiff to do so within twenty-one days. (Docs. 48.) More than a month passed with Plaintiff filing neither an opposition, a statement of non-opposition, or otherwise responding to the Court's Order.

On April 8, 2016, Defendant filed a motion to dismiss based on Plaintiff’s lack of prosecution of this action. (Doc. 49.) A Second Informational Order issued on April 13, 2016, providing Plaintiff with notice of the requirements to oppose the motion to dismiss and giving him twenty-one days from the date of that order to do so. (Doc. 50.) Plaintiff failed to comply with the Second Informational Order and, on April 25, 2016, an order issued giving Plaintiff twenty-one days to show cause why this action should not be dismissed based on his failure to

1 comply with this Court's orders as well as his failure to prosecute this action. (Doc. 51.) Despite  
2 lapse of more than sufficient time and repeated opportunity to do so, Plaintiff has failed to show  
3 cause why this action should not be dismissed, and has not responded in any way to the Court's  
4 last three orders.

5 The Local Rule, corresponding with Fed. R. Civ. P. 11, provides, "[f]ailure of counsel, or  
6 of a party to comply with . . . any order of the Court may be grounds for the imposition by the  
7 Court of any and all sanctions . . . within the inherent power of the Court." Local Rule 110.  
8 "District courts have inherent power to control their dockets," and in exercising that power, a  
9 court may impose sanctions, including dismissal of an action. *Thompson v. Housing Authority of*  
10 *Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice,  
11 based on a party's failure to prosecute an action or failure to obey a court order, or failure to  
12 comply with local rules. *See, e.g. Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)  
13 (dismissal for failure to comply with an order requiring amendment of complaint); *Malone v. U.S.*  
14 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with a court  
15 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to  
16 prosecute and to comply with local rules).

17 Based on Plaintiff's failure to comply with or otherwise respond to the Court's orders of  
18 March 8, 2016, April 13, 2016, and April 25, 2016, which required him to file an opposition or  
19 statement of non-opposition to Defendant's motions to compel discovery and to dismiss this  
20 action and to show cause why the action should not be dismissed, there remains no alternative but  
21 to dismiss this action for Plaintiff's failure to respond/obey a court order and for his failure to  
22 prosecute this case.

23 Accordingly, it is **HEREBY RECOMMENDED** that this action be dismissed, with  
24 prejudice, for Plaintiff's failure both to obey a court order and to prosecute this action. 42 U.S.C.  
25 § 1997e (a).

26 These Findings and Recommendations will be submitted to the United States District  
27 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
28 **twenty-one (21) days** after being served with these Findings and Recommendations, Plaintiff

1 may file written objections with the Court. The document should be captioned “Objections to  
2 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
3 objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v.*  
4 *Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th  
5 Cir. 1991)).

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7 IT IS SO ORDERED.

8 Dated: May 19, 2016

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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