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

DALE OWEN DUSTIN,

Plaintiff,

v.

GIPSON, et al.,

Defendants.

Case No. 1:14-cv-00757 AWI DLB PC

**FINDINGS AND RECOMMENDATIONS  
REGARDING DISMISSAL OF ACTION FOR  
REPEATED FAILURES TO FOLLOW THE  
COURT'S ORDERS**

**THIRTY-DAY DEADLINE**

Plaintiff Dale Owens Dustin (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on December 16, 2013, and it was transferred to this Court on May 16, 2014.

On June 9, 2014, the Court screened the complaint and dismissed it with leave to amend, explaining that Plaintiff had submitted approximately 38 pages of illegible handwriting. Plaintiff was ordered to file a legible amended complaint within thirty (30) days of the date of service of the order.

Since that time, Plaintiff received numerous extensions of time. The Court granted Plaintiff’s last request on October 28, 2014, and instructed Plaintiff that the sixty-day extension would be his final extension.

On December 31, 2014, Plaintiff filed a First Amended Complaint. However, the filing did not comply with the Court’s prior screening order because it was not legible, and the Court struck

1 the filing on February 23, 2015. The Court explained that Plaintiff would be given a final  
2 opportunity to file a legible amended complaint in compliance with the Court's June 9, 2014, order.  
3 Plaintiff was given thirty (30) days from the date of service of the order to do so.

4 On April 10, 2015, the Court issued an order to show cause why the action should not be  
5 dismissed for Plaintiff's failure to follow the Court's orders.

6 Plaintiff responded to the order on April 22, 2015, indicating that he had not received the  
7 order striking the First Amended Complaint.

8 On April 24, 2014, the Court discharged the order to show cause and afforded Plaintiff a final  
9 thirty-day extension within which to file a legible amended complaint. The Court further explained:

10 Plaintiff also disagrees with the Court's requirement that he submit a legible  
11 complaint, and questions the Court's motivation. To be clear, the Court can read some of  
12 Plaintiff's handwriting. It cannot, however, spend an inordinate amount of time deciphering  
13 Plaintiff's writing when he writes very small and includes almost 100 single-spaced lines on  
14 a single page. This is especially true where Plaintiff has submitted over 150 pages of such  
15 writing.

16 The Court is cognizant of Plaintiff's status as a pro se litigant, as well as his issues  
17 with handwriting, but it must hold Plaintiff to a certain standard of legible writing. Plaintiff  
18 likely has the ability to write with adequate spacing, but he continues to submit documents  
19 that fall far short of the legibility require of Local Rule 130(b).

20 Finally, to the extent that Plaintiff believes that counsel should be appointed so that  
21 the Court does not have to read his writing, the Court will not appoint counsel without a  
22 determination that Plaintiff is likely to succeed on the merits of his claims. At this point, the  
23 Court cannot make such a determination. Moreover, given some of Plaintiff's statements and  
24 purported claims, the Court has concerns regarding Plaintiff's ability to state a cognizable  
25 claim.

26 Therefore, Plaintiff SHALL file an amended complaint within thirty (30) days of the  
27 date of service of this order. His complaint must be legible. It must contain adequate spacing  
28 between words and adequate spacing between lines. Plaintiff is also reminded that a  
complaint must contain "a short and plain statement of the claim showing that the pleader is  
entitled to relief. . ." Fed. R. Civ. P. 8(a)(2). If Plaintiff cannot comply with these basic  
requirements after repeated instructions and opportunities, this action will be dismissed.

ECF No. 55, at 2-3. The Court also noted that (1) this is not the first action in which Plaintiff  
has been notified of the legibility requirements, and (2) Plaintiff may have three strikes under 28  
U.S.C. § 1915(g), and therefore may be prohibited from proceeding in forma pauperis absent an  
exception.

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1 This action has been pending for over a year and a half, and there is no operative complaint.  
2 Given Plaintiff's refusal to comply with the Court's orders, the Court has no alternative but to  
3 recommend that this action be dismissed for repeated failure to follow the Court's orders.

4 **RECOMMENDATION**

5 For the above reasons, the Court RECOMMENDS that this action be DISMISSED for  
6 repeated failure to follow the Court's orders.

7 These Findings and Recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
9 days after being served with these Findings and Recommendations, plaintiff may file written  
10 objections with the court. Such a document should be captioned "Objections to Magistrate Judge's  
11 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
12 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d  
13 1153 (9th Cir. 1991).

14 IT IS SO ORDERED.

15 Dated: June 4, 2015

16 /s/ Dennis L. Beck  
17 UNITED STATES MAGISTRATE JUDGE