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

ANTONIO RAMIREZ, JR.,	)	Case No.: 1:14-cv-00978- JLT
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANTS’ MOTION
	)	TO DISMISS
v.	)	
	)	(Doc. 46)
BAKERSFIELD POLICE DEPT., et al.,	)	
	)	
Defendants.	)	

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Plaintiff asserts that Defendants, officers of the Bakersfield Police Department, used of excessive force in the course of his arrest in violation of the Fourteenth Amendment, and seeks to hold Defendants liable pursuant to 42 U.S.C. § 1983. (*See* Doc. 1) Defendants seek dismissal of the action with prejudice, asserting Plaintiff has failed to prosecute the action and failed to comply with the Court’s orders regarding discovery. (Doc. 46) Plaintiff did not oppose the request for dismissal.

On October 20, 2015, the Court found the matter was suitable for decision without oral arguments, and the motion was taken under submission pursuant to Local Rule 230(g). For the reasons set forth below, Defendants’ motion to dismiss is **GRANTED**.

**I. Relevant Background**

The Court held a scheduling conference on May 4, 2015, at which it set deadlines related to discovery. (Doc. 41) The Court ordered the parties to exchange initial disclosures no later than June 5, 2015. (*Id.* at 1, 2) On July 14, 2015, Defendants filed a motion to compel discovery, asserting Plaintiff

1 failed to comply with the Court’s Scheduling Order to make his initial disclosures pursuant to Rule 26  
2 of the Federal Rules of Civil Procedure, and that Plaintiff failed to respond to Defendants’ discovery  
3 requests, including interrogatories and requests for production of documents. (Doc. 42) The Court  
4 granted Defendants’ motion, and reminded Plaintiff that his “failure to comply with a Court order—  
5 including the Court’s Scheduling Order directing the parties to serve initial disclosures pursuant to Rule  
6 26 of the Federal Rules of Civil Procedure—may result in the imposition of sanctions, including  
7 dismissal of the action.” (Doc. 45 at 4, citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.  
8 1992); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987))

9 Defendants filed the motion now pending before the Court on August 25, 2015, reporting  
10 Plaintiff failed to comply with the Court’s order to serve his initial disclosures and discovery responses  
11 “no later than August 21, 2015.” (Doc. 46-1 at 3, quoting Doc. 45 at 4) (emphasis omitted). Therefore,  
12 Defendants request dismissal of the action with prejudice. (*Id.* at 4-5)

### 13 **III. Failure to Comply with a Court Order**

14 Pursuant to Rule 41 of the Federal Rules of Civil Procedure, “If [a] plaintiff fails to prosecute  
15 or to comply with . . . a court order, a defendant may move to dismiss the action or any claim against  
16 it. Fed. R. Civ. P. 41(b). The Ninth Circuit explained, “District courts have inherent power to control  
17 their dockets,” and in exercising that power, a court may impose sanctions including dismissal of an  
18 action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court  
19 may dismiss an action with prejudice for a party’s failure to prosecute an action or failure to obey a  
20 court order. *See, e.g.; Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for  
21 failure to comply with a court order); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)  
22 (affirming the court’s decision to dismiss ab action with prejudice for failure to comply with a court  
23 order) *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute).

24 To determine whether to dismiss an action for failure to prosecute or failure to obey a court  
25 order, the Court must consider several factors, including: “(1) the public’s interest in expeditious  
26 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the  
27 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability  
28 of less drastic sanctions.” *Henderson*, 779 F.2d at 1423-24; *see also Ferdik*, 963 F.2d at 1260-61.

1 **IV. Discussion and Analysis**

2 1. *Public interest and the Court's docket*

3 In the case at hand, the public's interest in expeditiously resolving this litigation and the  
4 Court's interest in managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*,  
5 191 F.3d 983, 990 (9th Cir. 1999) ("The public's interest in expeditious resolution of litigation always  
6 favors dismissal"); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in  
7 managing their dockets without being subject to noncompliant litigants). This Court cannot, and will  
8 not hold, this action in abeyance based upon Plaintiff's failure to prosecute the action. Accordingly,  
9 these factors weigh in favor of dismissal of the action.

10 2. *Prejudice to Defendants*

11 To determine whether Defendants have been prejudiced, the Court must "examine whether the  
12 plaintiff's actions impair the ... ability to go to trial or threaten to interfere with the rightful decision of  
13 the case." *Malone*, 833 F.2d at 131 (citing *Rubin v. Belo Broadcasting Corp.*, 769 F.2d 611, 618 (9th  
14 Cir. 1985)) In this case, Plaintiff's failure to serve his initial disclosures and respond to Defendants'  
15 discovery requests significantly impair their ability to prepare for a trial. Moreover, a presumption of  
16 prejudice arises when a plaintiff unreasonably delays the prosecution of an action. *See Anderson v. Air*  
17 *West*, 542 F.2d 522, 524 (9th Cir. 1976). Accordingly, this factor weighs in favor of dismissal.

18 3. *Consideration of less drastic sanctions*

19 The Court "abuses its discretion if it imposes a sanction of dismissal without first considering  
20 the impact of the sanction and the adequacy of less drastic sanctions." *United States v. Nat'l Medical*  
21 *Enterprises, Inc.*, 792 F.2d 906, 912 (9th Cir. 1986). However, the Ninth Circuit has determined that a  
22 court's warning to a party that his failure to obey the court's order will result in dismissal can satisfy  
23 the "consideration of alternatives" requirement. *See Malone*, 833 F.2d at 133; *Ferdik*, 963 F.2d at  
24 1262; *see also Titus v. Mercedes Benz of North America*, 695 F.2d 746, 749 n.6 (3d Cir. 1982)  
25 (identifying a "warning" as an alternative sanction). Moreover, the Court explained that "a plaintiff  
26 can hardly be surprised" by a sanction of dismissal "in response to willful violation of a pretrial  
27 order." *Malone*, 833 F.2d at 133.

28 In the Scheduling Order dated May 4, 2015, the Court warned the parties that failure to comply

1 with the deadlines and terms of the schedule “may result in the imposition of sanctions.” (Doc. 41 at  
2 6) After Plaintiff failed to comply with the order to serve his initial disclosures and did not respond to  
3 Defendants’ discovery requests, the Court reminded Plaintiff that failure to comply with the Court’s  
4 orders “may result in the imposition of sanctions, including dismissal of the action.” (Doc. 45 at 4)  
5 Further, the Court stated: “**Plaintiff is strongly admonished that his failure to comply with this**  
6 **order or any other order of the Court—including the scheduling order--may result in the Court**  
7 **imposing sanctions on him which could include dismissal of the action as authorized by Local**  
8 **Rule 110.**” (Doc. 45 at 5, emphasis in original) These warnings to Plaintiff satisfy the requirement  
9 that the Court consider lesser sanctions, and this factor weighs in favor of dismissal. *See Ferdik*, 963  
10 F.2d at 1262; *Henderson*, 779 F.2d at 1424; *Titus*, 695 F.2d at 749 n.6.

11 4. *Public policy*

12 Given Plaintiff’s failure to prosecute the action, and failure to comply with the Court’s orders  
13 regarding discovery, the policy favoring disposition of cases on their merits is outweighed by the  
14 factors in favor of dismissal. *See Malone*, 833 F.2d at 133, n.2 (explaining that although “the public  
15 policy favoring disposition of cases on their merits . . . weighs against dismissal, it is not sufficient to  
16 outweigh the other four factors”).

17 **V. Conclusion and Order**

18 Plaintiff has failed to prosecute this action, and failed to comply with the Court’s orders dated  
19 May 4, 2015 (Doc. 41), and August 7, 2015 (Doc. 45). As set forth above, the factors set forth by the  
20 Ninth Circuit weigh in favor of dismissal of the matter.

21 Accordingly, **IT IS HEREBY ORDERED:**

- 22 1. Defendants’ motion to dismiss (Doc. 46) is **GRANTED**;
  - 23 2. This action is **DISMISSED**; and
  - 24 3. The Clerk of Court is directed to close this action.
- 25

26 IT IS SO ORDERED.

27 Dated: October 22, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE