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

LAVELL DARRYL YOUNG,  
  
Plaintiff,  
  
v.  
  
MICHAEL R. KIETZ,  
  
Defendant.

Case No. 1:14-cv-01471-LJO-SAB  
  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSING ACTION  
FOR FAILURE TO STATE A CLAIM  
  
OBJECTIONS DUE WITHIN THIRTY  
DAYS

**I.**

**PROCEDURAL HISTORY**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this action. Plaintiff filed a complaint on September 22, 2014 which was screened by the Court. On November 11, 2014, an order issued dismissing the complaint for failure to state a claim and granting Plaintiff thirty days in which to file an amended complaint. More than thirty days have passed and Plaintiff has not complied with or otherwise responded to the Court’s order.

**II.**

**DISCUSSION**

Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” The Court has the inherent power to

1 control its docket and may, in the exercise of that power, impose sanctions where appropriate,  
2 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.  
3 2000).

4 A court may dismiss an action, with prejudice, based on a party's failure to prosecute an  
5 action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.  
6 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik  
7 v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an  
8 order to file an amended complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
9 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised  
10 of address); Malone v. United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal  
11 for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir.  
12 1986) (dismissal for lack of prosecution and failure to comply with local rules).

13 In determining whether to dismiss an action for failure to comply with a pretrial order,  
14 the Court must weigh "(1) the public's interest in expeditious resolution of litigation; (2) the  
15 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
16 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
17 sanctions." In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226  
18 (9th Cir. 2006) (internal quotations and citations omitted). These factors guide a court in  
19 deciding what to do, and are not conditions that must be met in order for a court to take action.  
20 Id. (citation omitted).

21 In this instance the public's interest in expeditious resolution of the litigation and the  
22 Court's need to manage its docket weigh in favor of dismissal. Id. Plaintiff was ordered to file  
23 an amended complaint to cure the deficiencies in this complaint within thirty days of November  
24 7, 2014. Plaintiff has been provided with the legal standards that would apply to his claims and  
25 the opportunity to file an amended complaint. Plaintiff has neither filed an amended complaint  
26 nor otherwise responded to the Court's order. Plaintiff's failure to comply with the orders of the  
27 Court hinders the Court's ability to move this action towards disposition, and indicates that  
28 Plaintiff does not intend to diligently litigate this action.

1 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a  
2 rebuttable presumption of prejudice to the defendants in this action. In re Eisen, 31 F.3d 1447,  
3 1452-53 (9th Cir. 1994). This risk of prejudice may be rebutted if Plaintiff offers an excuse for  
4 the delay. In re Eisen, 31 F.3d at 1453. The risk of prejudice to the defendants also weighs in  
5 favor of dismissal.

6 The public policy in favor of deciding cases on their merits is greatly outweighed by the  
7 factors in favor of dismissal. It is Plaintiff's responsibility to move this action forward. This  
8 action can proceed no further without Plaintiff's cooperation and compliance with the order at  
9 issue, and the action cannot simply remain idle on the Court's docket, unprosecuted. In this  
10 instance, the fourth factor does not outweigh Plaintiff's failure to comply with the Court's orders.

11 Finally, a court's warning to a party that their failure to obey the court's order will result  
12 in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;  
13 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's November 7, 2014 order  
14 requiring Plaintiff to file an amended complaint expressly stated: "If Plaintiff fails to file an  
15 amended complaint in compliance with this order, this action will be dismissed, with prejudice, for  
16 failure to state a claim." (ECF No. 10 at 9:20-21.) Thus, Plaintiff had adequate warning that  
17 dismissal would result from his noncompliance with the Court's order and his failure to state a  
18 claim.

### 19 III.

#### 20 CONCLUSION AND RECOMMENDATION

21 Accordingly, it is HEREBY RECOMMENDED that this action be DISMISSED, with  
22 prejudice, for Plaintiff's failure to prosecute and failure to state a claim.

23 These findings and recommendations are submitted to the district judge assigned to this  
24 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within thirty (30)  
25 days of service of this recommendation, any party may file written objections to these findings  
26 and recommendations with the Court and serve a copy on all parties. Such a document should be  
27 captioned "Objections to Magistrate Judge's Findings and Recommendations." The district  
28 judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. §

1 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time may  
2 waive the right to appeal the district judge's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
3 1991).

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5 IT IS SO ORDERED.

6 Dated: December 12, 2014

  
UNITED STATES MAGISTRATE JUDGE

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