

1 **II.**

2 **DISCUSSION**

3 The Court has the inherent power to control its docket and may, in the exercise of that power,
4 impose sanctions where appropriate, including dismissal of the action. Bautista v. Los Angeles
5 County, 216 F.3d 837, 841 (9th Cir. 2000). In determining whether to dismiss an action for failure to
6 comply with a pretrial order, the Court must weigh: (1) the public’s interest in expeditious resolution
7 of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4)
8 the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
9 sanctions. In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226 (9th
10 Cir. 2006) (quotation marks and citation omitted). These factors guide a court in deciding what to do
11 and are not conditions that must be met in order for a court to take action. In re PPA, 460 F.3d at 1226
12 (citation omitted).

13 “The public’s interest in expeditious resolution of litigation always favors dismissal.”
14 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citation and internal quotation marks
15 omitted). Further, the Court’s need to manage its docket weighs in favor of dismissal, as “[i]t is
16 incumbent upon the Court to manage its docket without being subject to routine noncompliance of
17 litigants” Pagtalunan, 291 F.3d at 642 (citation and internal quotation marks omitted).

18 The Court constrained to find that the prejudice factor weighs against dismissal because the
19 mere pendency of an action does not constitute prejudice. In re PPA, 460 F.3d at 1228; Pagtalunan,
20 291 F.3d at 642-43. Further, while public policy favors disposition on the merits and therefore weighs
21 against dismissal. In re PPA, 460 F.3d at 1228; Pagtalunan, 291 F.3d at 643.

22 However, there are no alternative sanctions which are satisfactory. In re PPA, 460 F.3d at
23 1228-29; Pagtalunan, 291 F.3d at 643. A monetary sanction has little to no benefit in a case in which
24 the Plaintiff is proceeding in forma pauperis, and Plaintiff has failed to comply with the Court’s orders
25 which suggests lack of diligence on Plaintiff’s part with respect to prosecuting this action. In sum, the
26 Court finds that dismissal is warranted given Plaintiff’s unwillingness to file an amended complaint or
27 otherwise respond to the Court’s March 17, 2016, order dismissing his complaint with leave to amend
28 for failure to state a cognizable claim for relief.

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III.

RECOMMENDATION

Based on the foregoing, it is HEREBY RECOMMENDED that the instant action be dismissed, with prejudice, for failure to comply with a court order and failure to state a cognizable claim for relief.

This Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after being served with this Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 26, 2016



UNITED STATES MAGISTRATE JUDGE