



1 regarding this action, the undersigned issued findings and recommendations regarding dismissal  
2 of this action for failure to obey a court order and failure to prosecute. (ECF No. 12.)

3 On April 16, 2018, Plaintiff filed objections to the findings and recommendations,  
4 together with a first amended complaint. (ECF Nos. 13, 14.) As it appeared Plaintiff attempted  
5 to timely file his first amended complaint in compliance with the Court's February 15, 2018  
6 order, the Court vacated the findings and recommendations and screened Plaintiff's first amended  
7 complaint. (ECF No. 15.) The Court found that Plaintiff's first amended complaint failed to state  
8 a cognizable claim, and Plaintiff was granted leave to file a second amended complaint within  
9 thirty (30) days. (Id.)

10 Plaintiff's second amended complaint was due on or before June 4, 2018. Plaintiff has  
11 failed to file an amended complaint or otherwise communicate with the Court.

## 12 **II. Failure to State a Claim**

### 13 **A. Screening Requirement**

14 The Court is required to screen complaints brought by prisoners seeking relief against a  
15 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.  
16 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous  
17 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary  
18 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.  
19 § 1915(e)(2)(B)(ii).

20 A complaint must contain "a short and plain statement of the claim showing that the  
21 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
22 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
23 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
24 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as  
25 true, courts "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart Stores, Inc.,  
26 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

27 To survive screening, Plaintiff's claims must be facially plausible, which requires  
28 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable

1 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S.  
2 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted  
3 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the  
4 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

5 **B. Plaintiff's Allegations**

6 Plaintiff is currently housed at Kern Valley State Prison in Delano, California, where the  
7 events in the complaint are alleged to have occurred. In the original complaint, Plaintiff  
8 contended that Correctional Officer Compas, the sole defendant in this action, failed to protect  
9 Plaintiff from assault at the hands of Inmate Hampton in violation of Plaintiff's Eighth  
10 Amendment rights.

11 Plaintiff's first amended complaint alleges the following:

12 Furthermore as I stated in my original complaint, Inmate Hampton told C/O  
13 Compas that he and I did not get along and he (Inmate Hampton) also made the  
14 threat that somebodys [sic] gonna be hurt or killed. Inmate Hampton was  
15 speaking to C/O Compas. Hampton has a history of fighting his cell mates C/O  
16 Compas is aware of this fact. Hampton was forced upon me after fighting his  
17 cell-mate in Bldg. 3 "facility A" C/O Compas Bldg. and C/O Compas was aware.

18 Plaintiff further references pages 4 and 6 of a memorandum, but includes no attachments to the  
19 first amended complaint.

20 **C. Discussion**

21 The Eighth Amendment protects prisoners from inhumane methods of punishment and  
22 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
23 2005). Prison officials must provide prisoners with medical care and personal safety and must  
24 take reasonable measures to guarantee the safety of the inmates. Farmer v. Brennan, 511 U.S.  
25 825, 832–33 (1994) (internal citations and quotations omitted). Prison officials have a duty under  
26 the Eighth Amendment to protect prisoners from violence at the hands of other prisoners because  
27 being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for  
28 their offenses against society. Farmer, 511 U.S. at 833–34 (quotation marks omitted); Clem v.  
Lomeli, 566 F.3d 1177, 1181 (9th Cir. 2009); Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir.  
2005).

1           However, prison officials are liable under the Eighth Amendment only if they demonstrate  
2 deliberate indifference to conditions posing a substantial risk of serious harm to an inmate; and it  
3 is well settled that deliberate indifference occurs when an official acted or failed to act despite his  
4 knowledge of a substantial risk of serious harm. Farmer, 511 U.S. at 834, 841 (quotations  
5 omitted); Clem, 566 F.3d at 1181; Hearns, 413 F.3d at 1040. Where the failure to protect is  
6 alleged, the defendant must knowingly fail to protect plaintiff from a serious risk of conditions of  
7 confinement where defendant had reasonable opportunity to intervene. Orwat v. Maloney, 360  
8 F.Supp.2d 146, 155 (D. Mass. 2005), citing Gaudreault v. Municipality of Salem, 923 F.2d 203,  
9 207 n.3 (1st Cir. 1991); see also Borello v. Allison, 446 F.3d 742, 749 (7th Cir. 2006)  
10 (defendant’s deliberate indifference must effectively condone the attack by allowing it to happen).  
11 “Whether a prison official had the requisite knowledge of a substantial risk is a question of fact  
12 subject to demonstrating in the usual ways, including inference from circumstantial evidence, and  
13 a factfinder may conclude that a prison official knew of a substantial risk from the very fact that  
14 the risk was obvious.” Farmer, 511 U.S. at 842 (internal citations omitted).

15           Based on the allegations in the first amended complaint, Plaintiff has failed to state a  
16 cognizable failure to protect claim against Defendant Compas, and has failed to state any other  
17 claims for relief. Plaintiff’s first amended complaint does not include any allegations that he has  
18 suffered any injury at the hands of Defendant Compas or any other person.

19           An amended complaint supersedes the original complaint. Lacey v. Maricopa Cty., 693  
20 F.3d 896, 927 (9th Cir. 2012). Therefore, Plaintiff’s amended complaint was required to be  
21 “complete in itself without reference to the prior or superseded pleading.” Local Rule 220. To  
22 the extent Plaintiff’s first amended complaint references allegations made in the original  
23 complaint, those allegations are not properly before the Court.

### 24 **III. Failure to Prosecute and Failure to Obey a Court Order**

#### 25 **A. Legal Standard**

26           Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with  
27 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .  
28 within the inherent power of the Court.” District courts have the inherent power to control their

1 dockets and “[i]n the exercise of that power they may impose sanctions including, where  
2 appropriate, . . . dismissal.” Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A  
3 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,  
4 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46  
5 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet,  
6 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
7 amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987)  
8 (dismissal for failure to comply with court order).

9 In determining whether to dismiss an action, the Court must consider several factors:  
10 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its  
11 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
12 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779  
13 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

#### 14 **B. Discussion**

15 Here, Plaintiff’s second amended complaint is overdue, and he has failed to comply with  
16 the Court’s order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his  
17 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

18 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a  
19 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
20 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against  
21 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d  
22 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose  
23 responsibility it is to move a case toward disposition on the merits but whose conduct impedes  
24 progress in that direction,” which is the case here. In re Phenylpropanolamine (PPA) Products  
25 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

26 Finally, the Court’s warning to a party that failure to obey the court’s order will result in  
27 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;  
28 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s April 30, 2018 screening

1 order expressly warned Plaintiff that his failure to file an amended complaint would result in a  
2 recommendation of dismissal of this action, with prejudice, for failure to obey a court order and  
3 for failure to state a claim. (ECF No. 15, p. 5.) Thus, Plaintiff had adequate warning that  
4 dismissal could result from his noncompliance.

5 Additionally, at this stage in the proceedings there is little available to the Court that  
6 would constitute a satisfactory lesser sanction while protecting the Court from further  
7 unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in forma pauperis* in this  
8 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is  
9 likely to have no effect given that Plaintiff has ceased litigating his case.

10 **IV. Conclusion and Recommendation**

11 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY  
12 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim  
13 pursuant to 28 U.S.C. § 1915A, for failure to obey a Court order, and for Plaintiff's failure to  
14 prosecute this action.

15 These Findings and Recommendation will be submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**  
17 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written  
18 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
19 Findings and Recommendation." Plaintiff is advised that failure to file objections within the  
20 specified time may result in the waiver of the "right to challenge the magistrate's factual  
21 findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.  
22 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23  
24 IT IS SO ORDERED.

25 Dated: June 15, 2018

26 /s/ Barbara A. McAuliffe  
27 UNITED STATES MAGISTRATE JUDGE  
28