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## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF CALIFORNIA

NATHANIEL LOCKE,	) Case No. 1:18-cv-00075-SAB (PC)
Plaintiff, v.	ORDER DIRECTING CLERK OF COURT TO RANDOMLY ASSIGN A DISTRICT JUDGE TO ACTION
J. BUENO, et al.,  Defendants.	FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSAL OF ACTION FOR FAILURE TO COMPLY WITH A COURT ORDER  [ECF No. 9]

Plaintiff Nathaniel Locke is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the instant action on January 17, 2018.

On January 31, 2018, the Court found that Plaintiff's complaint stated a cognizable failure to protect claim against Defendants J. Bueno, B. Mello, A. Sotelo, R. Nuckles and M. Phillips and a cognizable retaliation claim against Defendants A. Sotelo, R. Nuckles, M. Phillips and J. Ostrander, but he failed to state another other claims for relief. (ECF No. 9.) Plaintiff was granted thirty days to either file an amended complaint or notify the Court of his intent to proceed only on the claims found to be cognizable. (Id.) Plaintiff was warned that if he failed to comply, the Court would recommend to a district judge that the action be dismissed for failure to comply with a court order. (Id.) More than thirty days have passed, and Plaintiff has not complied with or otherwise responded to the order.

The Court has the inherent power to control its docket and may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the action. <u>Bautista v. Los Angeles Cnty.</u>, 216 F.3d 837, 841 (9th Cir. 2000). In determining whether to dismiss an action, the Court must weigh "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its

docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." In re Phenylpropanolamine (PPA) Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (internal quotations and citations omitted). These factors guide a court in deciding what to do, and are not conditions that must be met in order for a court to take action. <u>Id.</u> (citation omitted).

Based on Plaintiff's failure to comply with or otherwise respond to the Court's order, the Court is left with no alternative but to recommend dismissal of the action. Id. This action can proceed no further without Plaintiff's cooperation and compliance with the order at issue, and the action cannot simply remain idle on the Court's docket, unprosecuted. <u>Id.</u>

Accordingly, this action is HEREBY RECOMMENDED that:

- 1. This action be dismissed for failure to comply with a court order; and
- 2. The Clerk of Court is directed to randomly assign a District Judge to this action

This Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen (14) 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 <u>Baxter v. Sullivan</u>, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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UNITED STATES MAGISTRATE JUDGE

IT IS SO ORDERED.

Dated: **March 12, 2018** 

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