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

ROBERT BANUELOS,  
  
Plaintiff,  
  
v.  
  
JOY C. GABLER, et al.,  
  
Defendants.

Case No. 1:18-cv-00675-LJO-SAB  
  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSING ACTION  
FOR FAILURE TO STATE A CLAIM  
  
OBJECTIONS DUE WITHIN THIRTY  
DAYS

Robert Banuelos (“Plaintiff”), proceeding pro se and in forma pauperis, filed this civil rights action pursuant 42 U.S.C. § 1983. (ECF No. 1.) The matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The complaint in this matter was screened and on May 22, 2018, an order issued finding that Plaintiff failed to state a claim. (ECF No. 4.) Plaintiff was provided with the relevant legal standards and was ordered to file an amended complaint within thirty days. (Id.) More than thirty days have passed and Plaintiff has failed to file an amended complaint or otherwise respond to the May 22, 2018 order.

Rule 41 of the Federal Rules of Civil Procedure allows a court to involuntarily dismiss an action if the plaintiff fails to prosecute the action or fails to comply with a court order. Fed. R. Civ. P. 41(b). 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

1 and all sanctions . . . within the inherent power of the Court.” The Court has the inherent power  
2 to control its docket and may, in the exercise of that power, impose sanctions where appropriate,  
3 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.  
4 2000).

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

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

22 In this instance the public’s interest in expeditious resolution of the litigation and the  
23 Court’s need to manage its docket weigh in favor of dismissal. Id. Plaintiff was ordered to file  
24 an amended complaint that complied with the Federal Rules of Civil Procedure within thirty days  
25 of May 22, 2018. Plaintiff has been provided with the legal standards that would apply to his  
26 claims and the opportunity to file an amended complaint. Plaintiff has neither filed an amended  
27 complaint nor otherwise responded to the Court’s order. Plaintiff’s failure to comply with the  
28 orders of the Court hinders the Court’s ability to move this action towards disposition, and

1 indicates that Plaintiff does not intend to diligently litigate this action.

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

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

12           Finally, a court's warning to a party that their failure to obey the court's order will result  
13 in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;  
14 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's May 22, 2018 order requiring  
15 Plaintiff to file an amended complaint expressly stated: "If Plaintiff fails to file an amended  
16 complaint in compliance with this order, the Court will recommend that this action be dismissed  
17 consistent with the reasons stated in this order." (ECF No. 4 at 8:1-3.) Thus, Plaintiff had  
18 adequate warning that dismissal would result from his noncompliance with the Court's order and  
19 his failure to state a claim.

20           Accordingly, it is **HEREBY RECOMMENDED** that this action be **DISMISSED** for  
21 Plaintiff's failure to state a claim.

22           This findings and recommendations is submitted to the district judge assigned to this  
23 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within thirty (30)  
24 days of service of this recommendation, Plaintiff may file written objections to this findings and  
25 recommendations with the Court. Such a document should be captioned "Objections to  
26 Magistrate Judge's Findings and Recommendations." The district judge will review the  
27 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C).  
28 Plaintiff is advised that failure to file objections within the specified time may result in the

1 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
2 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: June 29, 2018

  
UNITED STATES MAGISTRATE JUDGE

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