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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 TYSON LAYCOOK,  
12 Plaintiff,  
13 v.  
14 COUNTY OF FRESNO, et al.,  
15 Defendants.  
16

Case No. 1:18-cv-01263-LJO-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSING ACTION  
FOR FAILURE TO STATE A CLAIM AND  
FAILURE TO PROSECUTE

(ECF Nos. 1, 8)

OBJECTIONS DUE WITHIN THIRTY  
DAYS

17  
18 Tyson Laycook (“Plaintiff”), proceeding pro se, filed this civil rights action pursuant to  
19 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff’s complaint was screened and it was determined that  
20 Plaintiff failed to state a cognizable claim. An order issued on October 15, 2018, providing  
21 Plaintiff with thirty days in which to file an amended complaint. (ECF No. 8.) In the October  
22 15, 2018 order, Plaintiff was advised that if he failed to file an amended complaint, it would be  
23 recommended that this action be dismissed for the reasons stated in the order. (Id. at 12.) More  
24 than thirty days have passed and Plaintiff has not filed an amended complaint or otherwise  
25 responded to the October 15, 2018 order.

26 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these  
27 Rules or with any order of the Court may be grounds for imposition by the Court of any and all  
28 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); Ready Transp., Inc. v. AAR Mfg., Inc., 627 F.3d 402, 404 (9th Cir. 2010).

4 A court may dismiss an action based on a party's failure to prosecute an action, failure to  
5 obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52,  
6 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d  
7 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended  
8 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to  
9 comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.  
10 United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply  
11 with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack  
12 of prosecution and failure to comply with local rules). Where a plaintiff fails to file an amended  
13 complaint after being provided with leave to amend to cure the failure to state a claim, a district  
14 court may dismiss the entire action. Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005).

15 In determining whether to dismiss an action for failure to comply with a pretrial order,  
16 the Court must weigh "(1) the public's interest in expeditious resolution of litigation; (2) the  
17 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public  
18 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
19 sanctions." In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226  
20 (9th Cir. 2006); Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir.  
21 1986). These factors guide a court in deciding what to do, and are not conditions that must be  
22 met in order for a court to take action. In re Phenylpropanolamine (PPA) Products Liability  
23 Litigation, 460 F.3d at 1226.

24 In this instance the public's interest in expeditious resolution of the litigation and the  
25 Court's need to manage its docket weigh in favor of dismissal. Id. Plaintiff was ordered to file  
26 an amended complaint to cure the deficiencies that were identified in his complaint within thirty  
27 days of October 15, 2018. Plaintiff has been provided with the legal standards that would apply  
28 to his claims and the opportunity to file an amended complaint. Plaintiff has neither filed an

1 amended complaint nor otherwise responded to the Court's order. Plaintiff's failure to comply  
2 with the orders of the Court hinders the Court's ability to move this action towards disposition,  
3 and indicates that Plaintiff does not intend to diligently litigate this action.

4 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a  
5 rebuttable presumption of prejudice to the defendants in this action. In re Eisen, 31 F.3d 1447,  
6 1452-53 (9th Cir. 1994). The risk of prejudice to the defendants also weighs in favor of  
7 dismissal.

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

13 Finally, a court's warning to a party that their failure to obey the court's order will result  
14 in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;  
15 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's October 15, 2018 order  
16 requiring Plaintiff to file an amended complaint expressly stated: "If Plaintiff fails to file an  
17 amended complaint in compliance with this order, the Court will recommend to the district judge  
18 that this action be dismissed consistent with the reasons stated in this order." (ECF No. 8 at  
19 12:7-9.) Thus, Plaintiff had adequate warning that dismissal of this action would result from his  
20 noncompliance with the Court's order and his failure to state a claim.

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

23 This findings and recommendations is 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, Plaintiff may file written objections to this findings and  
26 recommendations with the court. Such a document should be captioned "Objections to  
27 Magistrate Judge's Findings and Recommendations." The district judge will review the  
28 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C).

1 Plaintiff is advised that failure to file objections within the specified time may result in the  
2 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
3 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4  
5 IT IS SO ORDERED.

6 Dated: November 27, 2018

  
UNITED STATES MAGISTRATE JUDGE