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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GABRIEL MARTINEZ,  
Plaintiff,  
v.  
ARLAN HARRELL,  
Defendant.

Case No. 1:19-cv-00924-LJO-BAM  
FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION FOR FAILURE TO  
STATE A CLAIM  
(Doc. Nos. 3-6)  
**FOURTEEN-DAY DEADLINE**

**I. Background**

Plaintiff Gabriel Martinez<sup>1</sup> (“Plaintiff”) is proceeding pro se and in forma pauperis in this civil action. On July 12, 2019, the Court screened Plaintiff’s complaint and granted him leave to amend within thirty (30) days. (Doc. No. 3.) Plaintiff was cautioned that if he failed to file an amended complaint in compliance with the Court’s order, the Court would recommend dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a claim. (*Id.* at 6.) Thirty (30) days have passed and Plaintiff has not filed an amended complaint. Instead, Plaintiff filed three separate “notices.” (Doc. Nos. 4, 5, and 6.)

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<sup>1</sup> Also identified in his filings as “i’ a ‘man.’” (*See, e.g.,* Doc. No. 1 at 1; Doc. No. 4 at 1.)

1 In the first notice filed on August 12, 2019, Plaintiff states as follows:

2 'i', a "man" declare;

- 3 • if a "woman", Barbara wishes to order 'i', a "man" to do something 'i',  
will gladly perform any order for just and fair compensation;
  - 4 • you do know you cant order a "man" to do anything without just and fair  
compensation?
  - 5 • what don't You understand about my 'claim'?
- maybe 'i' didn't wright it simple enough;
- 6 • federal courts are courts of record;
  - 7 • Courts of record proceed under 'common law' in a 'court of record' the  
majestrate is independant of the tribunal [Blacks Law Dictionary 4<sup>th</sup> ed.]

8 (Doc. No. 4 at 1) (unedited text).

9 In the second notice, also filed on August 12, 2019, Plaintiff states as follows:

10 'i' a "man" declare;

- 11 • 'i', have recieved a letter written in a language foreign to me 'i', believe  
it's called legalese;
- 12 • 'i', do not speak legalese, Chinese or niponese . . .
- 13 • There is no law; that 'i' subscribe to; that can compel me to decipher such  
incantations; for my case 'claim' lays in a 'court of record' which converses in  
words found amongst the common parlance;

14 (Doc. No. 5 at 1) (unedited text).

15 In the third notice, also filed on August 12, 2019, Plaintiff states as follows:

16 'i' a "man" declare;

- 17 • 'i', filed a 'claim' not a complaint;  
You do know the difference?
- 18 • Jurisdiction (federal question) [cf. article 6 clause 3]
- 19 • This is not a verses (v.) im not fighting Arlan;
- 20 • 'i' am not a plaintiff; 'i' a "man" Prosecutor;
- 21 • Arlan is not a defendant; Arlan Harrell wrongdoer;
- 22 • 'i', am not bringing controversy into the Court;
- 23 • 'i', require a court of record trial by jury;
- 24 • a 'common law court of record' is the only court the constitution secures  
and protects for the people [cf. amendment 7]
- 25 • is there some ungodly reason why 'i' can't have what the constitution  
secures and protects for me?

26 (Doc. No. 6 at 1) (unedited text).

27 Based on these "notices," it is evident that Plaintiff does not intend to comply with the  
28 Court's order and does not intend to file an amended complaint. Accordingly, the Court will  
recommend that this action be dismissed for failure to obey a court order and for failure to state a  
claim.

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1           **II. Discussion**

2           Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with  
3 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .  
4 within the inherent power of the Court.” District courts have the inherent power to control their  
5 dockets and “[i]n the exercise of that power they may impose sanctions including, where  
6 appropriate, . . . dismissal.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A  
7 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,  
8 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46  
9 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet,  
10 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
11 amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987)  
12 (dismissal for failure to comply with court order).

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

18           Here, although the action has not been pending for a significant length of time, Plaintiff  
19 has expressed his disregard of the Court’s directive and has evidenced his intention not to file an  
20 amended complaint in compliance with the Court’s order. The Court cannot hold this case in  
21 abeyance indefinitely. Thus, the Court finds that both the first and second factors weigh in favor  
22 of dismissal.

23           The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a  
24 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
25 Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs  
26 against dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza,  
27 291 F.3d 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose  
28 responsibility it is to move a case toward disposition on the merits but whose conduct impedes

1 progress in that direction,” which is the case here. In re Phenylpropanolamine (PPA) Prods. Liab.  
2 Litig., 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

3 Finally, the court’s warning to a party that failure to obey the court’s order will result in  
4 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;  
5 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s July 12, 2019 order expressly  
6 warned Plaintiff that his failure to comply with the Court’s order could result in dismissal of this  
7 action. (Doc. No. 3.) Thus, Plaintiff had adequate warning that dismissal could result from his  
8 noncompliance. Additionally, at this stage in the proceedings there is little available to the Court  
9 which would constitute a satisfactory lesser sanction while protecting the Court from further  
10 unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this  
11 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is  
12 likely to have no effect given that Plaintiff has ceased litigating his case.

13 **III. Conclusion and Recommendations**

14 For the reasons stated, it is HEREBY RECOMMENDED that this action be dismissed for  
15 failure to obey the Court’s July 12, 2019 order and for failure to state a claim pursuant to 28  
16 U.S.C. § 1915(e)(2).

17 These Findings and Recommendations will be submitted to the United States District  
18 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
19 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may  
20 file written objections with the Court. The document should be captioned “Objections to  
21 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
22 objections within the specified time may result in the waiver of the “right to challenge the  
23 magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.  
24 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).  
25 IT IS SO ORDERED.

26 Dated: August 15, 2019

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