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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN KARL RAY BUNTON,  
Plaintiff,  
v.  
FRESNO POLICE OFFICER 1, et al.,  
Defendants.

Case No. 1:23-cv-00104-HBK (PC)  
ORDER TO ASSIGN A DISTRICT JUDGE  
FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION WITHOUT PREJUDICE<sup>1</sup>  
14-DAY DEADLINE

Plaintiff Benjamin Karl Ray Bunton is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action. For the reasons set forth below, the undersigned recommends that the District Court dismiss this action without prejudice for Plaintiff’s failure to comply with a court order and prosecute this action.

**BACKGROUND**

Plaintiff initiated this action by filing a civil rights complaint under 42 U.S.C. § 1983. (Doc. No. 1, “Complaint”). On April 13, 2023, pursuant to 28 U.S.C. § 1915A the Court issued a screening order finding the Complaint failed to state a claim against any Defendants. (*See generally* Doc. No. 6). Plaintiff timely filed a First Amended Complaint. (Doc. No. 7, “FAC”). On June 26, 2023, the Court issued a second screening order finding the FAC stated cognizable

<sup>1</sup> This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

1 Fourth Amendment unreasonable use of force claims against three Doe Defendants. (*See* Doc.  
2 No. 8). Plaintiff filed a Notice indicating he wished to proceed on the claims deemed cognizable  
3 and dismiss the remaining claims and Defendants. (Doc. No. 9). The Court thereafter permitted  
4 Plaintiff to engage in discovery for the limited purpose of identifying the Doe Defendants and  
5 Plaintiff subsequently filed a Motion to Amend in which he supplied the names of the Doe  
6 Defendants. (Doc. No. 20). On December 1, 2023, the Court granted Plaintiff’s Motion in part  
7 and directed him to file a Second Amended Complaint naming the Doe Defendants within 30  
8 days. (Doc. No. 22). During this time, mail sent to Plaintiff was repeatedly returned  
9 undeliverable despite Plaintiff filing four notices of change of address. (*See* docket; Doc. Nos.  
10 18, 21, 25, 28).

11 On March 3, 2024, Plaintiff filed a Motion for a Status Update stating that he had received  
12 no mail from the Court for nearly five months. (Doc. No. 23). The Court granted the Motion,  
13 providing him a courtesy copy of the docket sheet and *sua sponte* granting Plaintiff an extension  
14 of time until April 8, 2024 to file a Second Amended Complaint (“SAC”). (*See* Doc. No. 24).  
15 On April 2, 2024, Plaintiff filed a pleading titled “Motion to Dismiss Without Prejudice” which  
16 the Court construed as a Notice of Voluntary Dismissal. (Doc. No. 28). Plaintiff sought to  
17 voluntarily dismiss his case because his legal papers containing the names of the Doe Defendants  
18 had been lost during his transfer back to Montana State Prison and he was thus unable to file a  
19 SAC. (*Id.* at 2). Because Plaintiff had previously provided the names of the Doe Defendants to  
20 the Court in his Motion to Amend, the Court disregarded the Motion, provided Plaintiff a  
21 courtesy copy of the Motion to Amend, and gave Plaintiff an extension of time until May 8, 2024  
22 to either file a SAC or confirm he wished to voluntarily dismiss his case. (Doc. No. 29). The  
23 Court expressly warned Plaintiff that “failure to timely file either a ‘Notice Under Rule 41’ or  
24 ‘Second Amended Complaint’ will result in the undersigned recommending the district court  
25 dismiss this action without prejudice for Plaintiff’s failure to prosecute this action.” (*Id.* at 2 ¶ 4).  
26 To date, Plaintiff has not filed any response and the time to do so has passed. (*See* docket).

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1 **APPLICABLE LAW AND ANALYSIS**

2 **A. Legal Standard**

3 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action  
4 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court  
5 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889  
6 (9th Cir. 2019) (citations omitted). Similarly, this Court’s Local Rules, which correspond with  
7 Federal Rule of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with . . .  
8 any order of the Court may be grounds for the imposition by the Court of any and all sanctions  
9 . . . within the inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent  
10 power to control their dockets” and, in exercising that power, may impose sanctions, including  
11 dismissal of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th  
12 Cir. 1986). A court may dismiss an action based on a party’s failure to prosecute an action, obey  
13 a court order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61  
14 (9th Cir. 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone*  
15 *v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with  
16 a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure  
17 to prosecute and to comply with local rules). In determining whether to dismiss an action, the  
18 Court must consider the following factors: (1) the public’s interest in expeditious resolution of  
19 litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants;  
20 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less  
21 drastic sanctions. *Henderson*, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir.  
22 1988).

23 **B. Analysis**

24 After considering each of the above-stated factors, the undersigned concludes dismissal  
25 without prejudice is warranted in this case. As to the first factor, the expeditious resolution of  
26 litigation is deemed to be in the public interest, satisfying the first factor. *Yourish v. California*  
27 *Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999).

28 Turning to the second factor, this Court’s need to efficiently manage its docket cannot be

1 overstated. This Court has “one of the heaviest caseloads in the nation,” and due to the delay in  
2 filling judicial vacancies, which was further exacerbated by the Covid-19 pandemic, operates  
3 under a declared judicial emergency. *See* Amended Standing Order in Light of Ongoing Judicial  
4 Emergency in the Eastern District of California. This Court’s time is better spent on its other  
5 matters than needlessly consumed managing a case with a recalcitrant litigant. The Court cannot  
6 effectively manage its docket when a litigant ceases to litigate his/her case or respond to a court  
7 order. Thus, the Court finds that the second factor weighs in favor of dismissal.

8 Delays inevitably have the inherent risk that evidence will become stale or witnesses’  
9 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third  
10 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor—risk of prejudice  
11 to defendant—weighs in favor of dismissal since a presumption of injury arises from the  
12 unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir.  
13 1976). Because Plaintiff’s inaction amounts to an unreasonable delay in prosecuting this action,  
14 the third factor weighs in favor of dismissal.

15 The fourth factor usually weighs against dismissal because public policy favors the  
16 disposition of cases on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).  
17 However, “this factor lends little support to a party whose responsibility it is to move a case  
18 toward disposition on the merits but whose conduct impedes progress in that direction,” which is  
19 the case here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217,  
20 1228 (9th Cir. 2006) (citation omitted). Indeed, “trial courts do not have time to waste on  
21 multiple failures by aspiring litigants to follow the rules and requirements of our courts.”  
22 *Pagtalunan*, 291 F.3d at 644 (Trott, J., concurring in affirmance of district court’s involuntary  
23 dismissal with prejudice of habeas petition where petitioner failed to timely respond to court  
24 order and noting “the weight of the docket-managing factor depends upon the size and load of the  
25 docket, and those in the best position to know what that is are our beleaguered trial judges.”).

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 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court’s April 8, 2024 Order

1 expressly warned Plaintiff that his failure to comply with the Court's order would result in a  
2 recommendation for dismissal of this action. (Doc. 29 at 2 ¶ 4). Thus, Plaintiff had adequate  
3 warning that dismissal could result from his noncompliance. And the instant dismissal is a  
4 dismissal *without* prejudice, which is a lesser sanction than a dismissal with prejudice, thereby  
5 satisfying the fifth factor. Indeed, Plaintiff earlier indicated that he wished to voluntarily dismiss  
6 this action without prejudice. (*See* Doc. No. 28).

7 After considering the factors set forth *supra* and binding case law, the undersigned  
8 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41(b) and Local Rule 110.

9 Accordingly, it is **ORDERED**:

10 The Clerk of the Court randomly assign this case to a District Judge.


11 It is further **RECOMMENDED**:

12 This action be **DISMISSED** without prejudice for Plaintiff's failure to obey court orders  
13 and failure to prosecute.

14 **NOTICE**

15 These Findings and Recommendations will be submitted to the United States District  
16 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
17 of the date of service of these Findings and Recommendations, a party may file written objections  
18 with the Court. The document should be captioned, "Objections to Magistrate Judge's Findings  
19 and Recommendations." A party's failure to file objections within the specified time may result in  
20 waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
21 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22  
23 Dated: June 3, 2024

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25 HELENA M. BARCH-KUCHTA  
26 UNITED STATES MAGISTRATE JUDGE  
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