

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 JESUS MONTEROSO,
5 Plaintiff,

No. C 12-05849 YGR (PR)

**ORDER OF DISMISSAL WITHOUT
PREJUDICE**

6 vs.

7 CITY OF SAN LEANDRO, et al.,
8 Defendants.
9 _____ /

10 On January 30, 2013, the Court issued an Order Reclassifying Case; Dismissing Complaint
11 with Leave to Amend; and Directing Plaintiff to Pay the Filing Fee Or File a Completed *In Forma*
12 *Pauperis* (IFP) Application. Plaintiff was granted twenty-eight days from the date of the Order to
13 file an amended complaint on the Court's form for prisoner Section 1983 complaints and to provide
14 factual as well as legal bases for his claims. The Court also directed Plaintiff to either pay the full
15 filing fee or complete an IFP application. Plaintiff was warned that a failure to timely file an
16 amended complaint and to either pay the full filing fee or complete an IFP application would result
17 in dismissal without prejudice for failure to prosecute. The Clerk sent Plaintiff a blank civil rights
18 complaint form as well as a prisoner's IFP application.

19 More than twenty-eight days have passed, and Plaintiff has not filed the necessary
20 documents, paid the full filing fee, or otherwise communicated with the Court.


21 Accordingly, IT IS HEREBY ORDERED that the complaint in the above-captioned action is
22 DISMISSED WITHOUT PREJUDICE for failure to prosecute pursuant to Federal Rule of Civil
23 Procedure 41(b). The Clerk shall enter judgment and close the file.

24 When and if Plaintiff is prepared to pursue his claims, he may file a new civil rights action.
25 The limitations period to file a § 1983 action in California is two years, but it is tolled for up to two
26 years during a continuous period of incarceration. *See Silva v. Crain*, 169 F.3d 608, 610 (9th Cir.
27 1999) (holding, pursuant to Cal. Civ. Proc. Code § 340(3), that the limitations period for filing a
28 § 1983 action in California is one year); S.B. 688 (amending Cal. Civ. Proc. Code § 340(3) and

1 adding § 335.1 to establish two-year residual limitations period for personal injury actions); Cal.
2 Civ. Proc. Code § 352.1(a) (providing for an additional two years of tolling during a period of
3 continual imprisonment).

4 IT IS SO ORDERED.

5 DATED: March 26, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28