

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Felix v. Clandenin

Felix · No. 1:23-cv-00839-KES-BAM (PC) · Decided February 25, 2025

OPINION

(PC) Felix v. Clandenin

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 SCOTT EMERSON FELIX, Case No. 1:23-cv-00839-KES-BAM (PC) 12 Plaintiff,

FINDINGS AND RECOMMENDATIONS TO

DISMISS ACTION, WITH PREJUDICE, FOR

13 v. FAILURE TO STATE A CLAIM, FAILURE

TO OBEY COURT ORDERS, AND FAILURE

14 CLANDENIN, et al., TO PROSECUTE 15 Defendants. (ECF Nos. 21, 25, 27, 30)

16 FOURTEEN (14) DAY DEADLINE

17 18 I. Background 19 Plaintiff Scott Emerson Felix (“Plaintiff”) is a civil detainee proceeding
pro se and in 20 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Individuals detained 21 pursuant to California Welfare and Institutions Code § 6600 et seq. are
civil detainees and are not 22 prisoners within the meaning of the Prison Litigation Reform Act.

Page v. Torrey, 201 F.3d 23 1136, 1140 (9th Cir. 2000). 24 On June 14, 2024, the Court issued a

screening order granting Plaintiff leave to file a first 25 amended complaint or a notice of
voluntary dismissal within thirty (30) days. (ECF No. 21.) The 26 Court expressly warned

Plaintiff that the failure to comply with the Court’s order would result in 27 a recommendation for
dismissal of this action, with prejudice. (Id. at 10.) Following Plaintiff’s 28 failure to file an

amended complaint or otherwise communicate with the Court, on July 31, 2024, 1 the Court

issued findings and recommendations to dismiss this action, with prejudice, for failure 2 to state a
claim, failure to obey a court order, and failure to prosecute. (ECF No. 22.) With the 3 filing of

Plaintiff’s motion for a ninety-day continuance on August 2, 2024, the Court vacated the 4
findings and recommendations and granted Plaintiff an extension of time to file an amended 5

complaint or notice of voluntary dismissal.¹ (ECF Nos. 24, 25.) Plaintiff was granted a third 6
extension of time on December 4, 2024. (ECF Nos. 29, 30.) Plaintiff’s first amended complaint 7

or notice of voluntary dismissal were therefore due on or before February 5, 2025. (ECF No. 30.)

8 Plaintiff has not filed an amended complaint or otherwise communicated with the Court, and the

9 deadline to do so has expired. 10 II. Failure to State a Claim 11 A. Screening Requirement 12
The Court is required to screen complaints brought by prisoners seeking relief against a 13
governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. 14
§ 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous
15 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks
monetary 16 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b). 17
A complaint must contain "a short and plain statement of the claim showing that the 18 pleader is
entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 19 required, but
"[t]hreadbare recitals of the elements of a cause of action, supported by mere 20 conclusory
statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 21 Atlantic*
Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as 22 true,
courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 23
572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). 24 To survive
screening, Plaintiff's claims must be facially plausible, which requires 25 sufficient factual detail
to allow the Court to reasonably infer that each named defendant is liable 26 1 On August 2, 2024,
Plaintiff also filed a motion for reconsideration of the assigned District Judge's June 10, 2024 27
order adopting findings and recommendations to deny, without prejudice, Plaintiff's motion for a
temporary restraining order and preliminary injunction. (ECF No. 23.) The motion for
reconsideration is currently pending 28 before the District Judge. 1 for the misconduct alleged.
Iqbal, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret 2 Serv.*, 572 F.3d 962, 969
(9th Cir. 2009). The sheer possibility that a defendant acted unlawfully 3 is not sufficient, and
mere consistency with liability falls short of satisfying the plausibility 4 standard. *Iqbal*, 556 U.S.
at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969. 5 B. Plaintiff's Allegations 6 Plaintiff is
currently housed at Coalinga State Hospital ("CSH"), where the events in the 7 complaint are
alleged to have occurred. Plaintiff names the following defendants: (1) Stephanie 8 Clandenin,
Director of the Department of State Hospitals ("DSH"); (2) Brandon Price, Executive 9 Director
of CSH; and (3) Joel Castaneda, Hospital Administrator of CSH. All defendants are 10 sued in
their official capacities. 11 Plaintiff alleges as follows: 12 On or about January 24, 2023,
Defendants Castaneda and Price issued a Memorandum 13 (attached as Exhibit A) outlining how
CSH "has purchased Norix Anti-ligature furniture to 14 complete a facility wide furniture retrofit .
. . . The removal of old furniture and installation of new 15 will happen in two phases over a two-
year time period Once the installation is complete, the 16 patient population will be allowed to
retain any existing personal items/plastic bins as long as 17 they are able to fit inside their
designated furniture storage areas." 18 The current furniture provided to CSH patients within their
personal living area² includes: 19 (1) one chair with a padded seat and back; (2) one bed
approximately 35 inches wide, 74 inches 20 long, and 15 inches high; (3) one floor shelf
approximately 14 inches x 36 inches x 26 inches (7.6 21 cubic feet total); (4) one wardrobe
approximately 20 inches deep x 34 inches wide x 62 inches 22 high (approximately 24 cubic feet

total); (5) one wall shelf approximately 14 inches x 19 inches x 23 39 inches (approximately 6 cubic feet total); and (6) one table approximately 19 inches x 23 24 inches (approximately 4 square feet). 25 Patients are allowed to store items below their bed (resulting in approximately 19 cubic 26 feet of storage space), above their wardrobe (resulting in approximately 7.5 cubic feet of storage 27 2 The area within either the 4-man dormitory or the single-man room that CSH designates as the location where 28 SVPA detainees sleep and store their personal property. 1 space), and above their wall shelf within 18 inches of the ceiling (resulting in approximately 6 2 cubic feet of storage space). Thus, presently there is a relatively comfortable chair and 3 approximately 70 cubic feet of storage space within each CSH detainee's personal living area. 4 The Norix ("Norix") Anti-ligature furniture is hard plastic. The chairs are not padded in 5 any manner, causing the user to swiftly experience discomfort that, through time, progresses to 6 pain. The dimensions of the Norix furniture are as follows: (1) bed, 32 inches wide x 23 inches 7 high x 78 inches long; (2) cabinet, 22 inches wide x 23 inches deep x 56 inches high; (3) table, 8 35.5 inches wide x 23.8 inches deep; (4) book shelf, 27 inches wide x 11 inches deep x 17 inches 9 high; and (5) book case, 26 inches wide x 34 inches high x 16 inches deep. 10 The under bed storage is approximately 9 cubic feet, the cabinet and book shelf have 11 sloped tops which prevents any storage on top. The total storage afforded by the Norix furniture 12 is approximately 36 square feet, which is approximately half of the present storage space 13 permissible. 14 Presently in CSH's 4-man dorms, on each half of the dorm the tall wardrobes are placed 15 side-by-side. There is a substantial reduction in the privacy afforded to CSH detainees by the 16 Norix furniture in comparison to the present furniture. (See Exhibit B – "4 Man Dorm Layout" / 17 "Single Man Dorm Layout.") 18 CSH patients have a patient advocacy group entitled "Civil Detainee's Advisory Council" 19 ("CDAC"). On or about February 6, 2023, CDAC posed a number of questions to CSH 20 administration which outlined some of the problems with the replacement of the present CSH 21 furniture with the Norix furniture. These included concerns regarding the reduction of storage 22 space, the reduction in open floor space, and a reduction in privacy. (See Exhibit B.) 23 Irrespective of the unique safety and security issues that exist depending on various CSH 24 detainees' behavior and treatment needs, the highly restrictive and uncomfortable Norix furniture 25 is being installed on all CSH units. There are some CSH patients who engage in behavior that 26 poses a danger to other CSH patients and/or CSH staff ("Group 1"), while most CSH patients do 27 not engage in behavior that poses a danger to other CSH patients and/or CSH staff ("Group 2"). 28 Plaintiff would fall within Group 2, as evidenced by the fact that CSH has placed him on a 1 "Residential Recovery Unit," which are CSH's least restrictive units. Despite these two groups of 2 patients' different safety, security, and treatment needs, Defendants have provided no indication 3 as to whether any safety and security concerns posed by Group 1 form the foundation of an 4 alleged need for the Norix furniture, and assuming said alleged need exists, Defendants have 5 provided no indication as to why it is being imposed on Group 2 detainees. 6 Defendants have provided no reason for removing the present furniture

and installing the 7 Norix furniture. The present furniture was installed in about 2016. For the approximately 7 years 8 since the installation, no agent of DSH, including Defendants, has provided any indication to 9 Plaintiff that the present furniture subjects either the patients or CSH detainees to any safety or 10 security risks. 11 Each of the Defendants had a duty to ensure that all SVPA legislation civil detainees, 12 including Plaintiff, were housed in a manner that was consistent with their Fourteenth 13 Amendment substantive due process rights. Any restrictions said detainees are subject to at CSH 14 are to be consistent with the four legitimate non-punitive interests: (i) ensuring the public was 15 protected from individuals committing sexually violent offenses; (ii) ensuring the detainees were 16 afforded adequate mental health treatment; (iii) ensuring the effective management of the civil 17 detention facility; and (iv) ensuring the safety and security of the civil detention facility. 18 Additionally, any conditions that relate to any of these four interests must not be excessive in 19 relation to its purpose. 20 Defendants have not provided any reason consistent with any of the above legitimate 21 interests for: (1) removing the current padded chairs and providing hard plastic Norix chairs; (2) 22 reducing the CSH detainees' storage space by approximately 50% through the installation of 23 Norix furniture; or (3) reducing the CSH detainees' privacy through the installation of Norix 24 furniture. There is no evident non-punitive reason for this restrictive condition, making it 25 excessively restrictive in relation to the permissible legitimate non-punitive interests. 26 If Defendants allege a safety and security risk exists with Group 1 patients that justifies 27 the need for the installation of Norix furniture, said justification would not explain why the Norix 28 furniture installation is required for Group 2 patients. The safety and security reason would 1 subsequently be excessively restrictive in relation to the permissible legitimate non-punitive 2 interests. 3 Due to the facts noted above, Plaintiff has experienced emotional suffering. 4 Defendants Clandenin, Price, and Castaneda violated Plaintiff's Fourteenth Amendment 5 substantive due process right to not be subjected to punitive conditions of confinement while 6 being civilly detained pursuant to the SVPA at CSH. As a direct result of these Defendants' 7 failures, Plaintiff was subjected to emotional suffering. 8 Defendants Clandenin and Price were responsible for the policies and customs giving rise 9 to the injuries alleged by Plaintiff and their official policies, customs, practices, training, and/or 10 lack thereof are the cause of the harms which resulted in Plaintiff's Fourteenth Amendment 11 constitutional violations. Defendants Clandenin and Price failed to both create policies that 12 ensured that SVPA legislation civil detainees at CSH, including Plaintiff, would not be subjected 13 to conditions of confinement that were excessively restrictive in relation to any non-punitive 14 legitimate interests consistent with the Fourteenth Amendment, and failed to take reasonable steps 15 to ensure that those policies were adhered to by staff tasked with the day-to-day operations of 16 CSH. 17 Defendant Castaneda knew or ought to have known that CSH lacks the facilities, customs, 18 and practices to house SVPA civil detainees, including Plaintiff, in a manner consistent with the 19 Fourteenth Amendment. Defendant Castaneda failed to acknowledge that CSH's decision to 20 install Norix furniture would violate Plaintiff's Fourteenth Amendment

rights and failed to 21 actively take steps to ensure that Plaintiff was housed in a manner consistent with the Fourteenth 22 Amendment. 23 Plaintiff requests the following relief: injunctive relief that would prohibit Defendants 24 and/or agents of Defendants from installing Norix furniture on any unit where Plaintiff resides, 25 during the pendency of this lawsuit and in the future; a declaratory judgment that installation of 26 Norix furniture on any unit where Plaintiff resides is contrary to Plaintiff's Fourteenth 27 Amendment rights; and appointment of counsel when the Court deems necessary. 28 1 C. Discussion 2 Plaintiff's complaint fails state a cognizable claim for relief. As Plaintiff is proceeding 3 pro se, he will be granted leave to amend the complaint to the extent that he can do so in good 4 faith. To assist Plaintiff, the Court will provide the pleading and legal standards that appear 5 relevant to his claims. 6 1. Official Capacity 7 Plaintiff asserts that he is suing Defendants Clandenin, Price, and Castaneda in their 8 official capacities. 9 "Suits against state officials in their official capacity . . . should be treated as suits against 10 the State." *Hafer v. Melo*, 502 U.S. 21, 25 (1991); *Holley v. Cal. Dep't of Corr.*, 599 F.3d 1108, 11 1111 (9th Cir. 2010) (treating prisoner's suit against state officials in their official capacities as a 12 suit against the state of California). An official-capacity suit "represent[s] only another way of 13 pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 14 U.S. 159, 165 (1985) (citation omitted). Such a suit "is not a suit against the official personally, 15 for the real party in interest is the entity." *Id.* at 166. 16 A claim for prospective injunctive relief against a state official in his or her official 17 capacity is not barred by the Eleventh Amendment provided the official has authority to 18 implement the requested relief. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 92 (1989). 19 Moreover, "[a] plaintiff seeking injunctive relief against the State is not required to allege a 20 named official's personal involvement in the acts of omissions constituting the alleged 21 constitutional violation." *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th 22 Cir. 2013); see *Rouser v. White*, 707 F. Supp. 2d 1055, 1066 (E.D. Cal. 2010) (proper defendant

23 for injunctive relief in suit seeking implementation of CDCR policy is the CDCR Secretary in his 24 official capacity). Instead, Plaintiff need only identify the law or policy challenged as a 25 constitutional violation and name the official or officials within the entity who is or are alleged to 26 have a "fairly direct" connection with the enforcement of that policy, see *Ex Parte Young*, 209 27 U.S. 123, 157 (1908), and can appropriately respond to injunctive relief. *Hartmann*, 707 F.3d at 28 1127 (citation omitted); see also *Pouncil v. Tilton*, 704 F.3d 568, 576 (9th Cir. 2012). 1 Here, Plaintiff alleges that each Defendant, in their official capacity, was responsible in 2 some part for the decision to replace the current CSH furniture with the Norix furniture. Plaintiff 3 also claims only injunctive and declaratory relief, but no damages. As such, Plaintiff may 4 proceed on any cognizable claims found against Defendants in their official capacities. 5 2. Fourteenth Amendment – Conditions of Confinement 6 To state a claim that the conditions of his confinement violate his due process rights under 7 the Fourteenth Amendment, Plaintiff must

allege facts showing the conditions amount to 8 “punishment.” *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004). Punitive conditions of 9 confinement are those that are either expressly intended to punish or those that are “excessive in 10 relation to the alternative purpose [for confinement].” *Demery v. Arpaio*, 378 F.3d 1020, 1028 11 (9th Cir. 2004) (quoting *Bell v. Wolfish*, 441 U.S. 520, 538 (1979)). “Persons who have been 12 involuntarily committed are entitled to more considerate treatment and conditions of confinement 13 than criminals whose conditions of confinement are designed to punish.” *Youngberg v. Romeo*, 14 457 U.S. 307, 321–22 (1982). A civilly committed individual’s right to constitutionally adequate 15 conditions is protected by the substantive component of the Due Process Clause of the Fourteenth 16 Amendment. *Id.* at 315. To determine whether these substantive due process rights have been 17 violated, the Court must balance the individual’s “liberty interests against the relevant state 18 interests.” *Id.* at 320–21. The proper standard in determining whether a condition or restriction is 19 constitutional for a civilly committed individual is whether “professional judgment in fact was 20 exercised,” rather than the “deliberate indifference” standard used for Eighth Amendment cruel 21 and unusual punishment claims brought by prisoners. *Id.* at 312 n.11, 322. “[D]ecisions made by 22 the appropriate professional are entitled to a presumption of correctness,” and “liability may be 23 imposed only when the decision by the professional is such a substantial departure from accepted 24 professional judgment, practice, or standards as to demonstrate that the person responsible 25 actually did not base the decision on such a judgment.” *Id.* at 323–24. 26 The Ninth Circuit has analyzed such conditions of confinement claims under an objective 27 deliberate indifference standard. See *Castro v. Cty. of L.A.*, 833 F.3d 1060, 1071 (9th Cir. 2016) 28 (en banc) (adopting objective deliberate indifference standard based on *Kingsley v. Hendrickson*, 1 576 U.S. 389 (2015), to evaluate failure to protect claim brought by pretrial detainee). That 2 standard demands that: (1) the defendant made an intentional decision with respect to the 3 conditions under which the plaintiff was confined; (2) those conditions put the plaintiff at 4 substantial risk of suffering serious harm; (3) the defendant did not take reasonable available 5 measures to abate that risk, even though a reasonable officer in the circumstances would have 6 appreciated the high degree of risk involved—making the consequences of the defendant’s 7 conduct obvious; and (4) by not taking such measures, the defendant caused the plaintiff’s 8 injuries. *Castro*, 833 F.3d at 1071. 9 Plaintiff fails to state a cognizable conditions of confinement claim. At most, Plaintiff 10 alleges that installation of the Norix furniture will cause him physical discomfort because he will 11 be seated on a hard plastic chair instead of a padded chair, reduce his available storage space by 12 approximately 50% to only 36 cubic feet,³ and reduce his privacy. Plaintiff repeatedly alleges 13 that the only injury he will sustain is emotional suffering. 14 Plaintiff has not made a showing that the installation of the Norix furniture will amount to 15 “punishment” or that any decision was made by Defendants that would put Plaintiff at 16 “substantial risk of suffering serious harm.” 17

3. Injunctive Relief 18 With respect to Plaintiff’s requests for injunctive relief, “[P]laintiff must show that he has 19 sustained or is immediately in danger of sustaining some direct injury as the

result of the 20 challenged official conduct and the injury or threat of injury must be both real and immediate, not 21 conjectural or hypothetical.” *Jones v. City of Los Angeles*, 444 F.3d 1118, 1126 (9th Cir. 2006) 22 (internal quotations and citations omitted). “The key issue is whether the plaintiff is ‘likely to 23 suffer future injury.’” *Jones*, 444 F.3d at 1126. As discussed above, Plaintiff has failed to show 24 that he will suffer any future injury. 25 Moreover, where, as here, “a plaintiff seeks a mandatory preliminary injunction that goes 26 beyond maintaining the status quo pendente lite, ‘courts should be extremely cautious’ about 27 3 The exhibits attached to the complaint suggest that CSH is only required to provide a minimum of 30 cubic feet of 28 storage space. (ECF No. 1, p. 18.) 1 issuing a preliminary injunction and should not grant such relief unless the facts and law clearly 2 favor the plaintiff.” *Committee of Central American Refugees v. I.N.S.*, 795 F.2d 1434, 1441 (9th

3 Cir. 1986), quoting *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 4 1984). The facts and the law as presented in the complaint and in Plaintiff’s separately-filed 5 motion for a temporary restraining order do not warrant such relief. (See ECF Nos. 9, 12, 20.) 6 4. Declaratory Relief 7 To the extent Plaintiff’s complaint seeks a declaratory judgment, it is unnecessary. “A 8 declaratory judgment, like other forms of equitable relief, should be granted only as a matter of 9 judicial discretion, exercised in the public interest.” *Eccles v. Peoples Bank of Lakewood Village*, 10 333 U.S. 426, 431 (1948). “Declaratory relief should be denied when it will neither serve a useful 11 purpose in clarifying and settling the legal relations in issue nor terminate the proceedings and 12 afford relief from the uncertainty and controversy faced by the parties.” *United States v. 13 Washington*, 759 F.2d 1353, 1357 (9th Cir. 1985). If this action reaches trial and the jury returns 14 a verdict in favor of Plaintiff, then that verdict will be a finding that Plaintiff’s constitutional 15 rights were violated. Accordingly, a declaration that any defendant violated Plaintiff’s rights is 16 unnecessary. 17 III. Failure to Prosecute and Failure to Obey a Court Order 18 A. Legal Standard 19 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with 20 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . 21 within the inherent power of the Court.” District courts have the inherent power to control their 22 dockets and “[i]n the exercise of that power they may impose sanctions including, where 23 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A 24 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, 25 failure to obey a court order, or failure to comply with local rules. See, e.g., *Ghazali v. Moran*, 46 26 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 27 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring 28 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) 1 (dismissal for failure to comply with court order). 2 In determining whether to dismiss an action, the Court must consider several factors: 3 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its 4 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring

disposition of 5 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). 7 B. Discussion 8 Here, Plaintiff's first amended complaint is overdue, and he has failed to comply with the 9 Court's orders. The Court cannot effectively manage its docket if Plaintiff ceases litigating his 10 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal. 11 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a 12 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. 13 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against 14 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 15 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose 16 responsibility it is to move a case toward disposition on the merits but whose conduct impedes 17 progress in that direction," which is the case here. In re Phenylpropanolamine (PPA) Products 18 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). 19 Finally, the Court's warning to a party that failure to obey the court's order will result in 20 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262; 21 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court's June 14, 2024 screening 22 order, August 6, 2024 order vacating findings and recommendations, and September 17, 2024 and

23 December 4, 2024 orders granting Plaintiff's requests for extension of time all expressly warned

24 Plaintiff that his failure to file an amended complaint would result in a recommendation of 25 dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a 26 claim. (ECF Nos. 21, 25, 27, 30.) Thus, Plaintiff had adequate warning that dismissal could 27 result from his noncompliance. 28 Additionally, at this stage in the proceedings there is little available to the Court that 1 would constitute a satisfactory lesser sanction while protecting the Court from further 2 unnecessary expenditure of its scarce resources. As Plaintiff is proceeding in forma pauperis in 3 this action, it appears that monetary sanctions will be of little use and the preclusion of evidence 4 or witnesses is likely to have no effect given that Plaintiff has ceased litigating his case. 5 IV. Recommendation 6 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY 7 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim 8 pursuant to 28 U.S.C. § 1915A, for failure to obey court orders, and for Plaintiff's failure to 9 prosecute this action. 10 These Findings and Recommendations will be submitted to the United States District 11 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 12 fourteen (14) days after being served with these Findings and Recommendations, the parties may 13 file written objections with the court. The document should be captioned "Objections to 14 Magistrate Judge's Findings and Recommendations." Objections, if any, shall not exceed 15 fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page 16 number if already in the record before the

Court. Any pages filed in excess of the 15-page 17 limit may not be considered. The parties are advised that failure to file objections within the 18 specified time may result in the waiver of the “right to challenge the magistrate’s factual 19 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 21 IT IS SO ORDERED. 22 23 Dated: February 25, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE
24 25 26 27 28