

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gray v. Allison

No. 1:23-cv-01285-BAM (PC), United States District Court for the Eastern District of California (December 1, 2025)

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Otha Gray’s 42 U.S.C. § 1983 action against California corrections officials. The recommendation concludes that the complaint fails to state an Eighth or Fourteenth Amendment claim and does not adequately support supervisory liability, a privacy claim, or claims against unidentified Doe defendants. Dismissal with prejudice is also recommended based on Gray’s failure to obey the court’s order, failure to file an amended complaint, and failure to prosecute.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 1, 2025
DOCKET	1:23-cv-01285-BAM (PC)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Magistrate judge's screening of pro se prisoner civil rights complaint; findings and recommendations to dismiss.
STANDARD OF REVIEW	Screening under 28 U.S.C. § 1915A
PRECEDENTIAL VALUE	non_precedential

TOPICS

- section 1983
- prisoners rights
- motions to dismiss
- pleadings
- civil procedure

PRACTICE AREAS

- civil rights
- prisoners' rights
- civil procedure

QUESTIONS PRESENTED

1. Whether the complaint states a cognizable claim under 42 U.S.C. § 1983 against the named defendants for failure to protect from violence under the Eighth Amendment
2. Whether supervisory liability attaches to the CDCR Secretary, Warden, and John Doe supervisor based solely on their supervisory roles or failure to train
3. Whether Plaintiff has a constitutionally protected privacy interest in his prison legal status summary (LSS)
4. Whether dismissal with prejudice is appropriate for failure to state a claim, failure to obey a court order, and failure to prosecute

HOLDINGS

1. Plaintiff fails to state a cognizable Eighth Amendment claim because he does not allege that any defendant knew of a specific risk of harm to him from an assault by another inmate.
2. Supervisory liability cannot be imposed under a respondeat superior theory; personal participation in or knowledge of constitutional violations, or implementation of a deficient policy, is required.
3. No constitutionally protected expectation of privacy exists in prison treatment records when the state has a legitimate interest in access.
4. Dismissal with prejudice is the appropriate sanction under the Henderson factors, given Plaintiff's failure to amend his deficient complaint, failure to obey the court's order, and failure to prosecute.

KEY QUOTATIONS

“[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” (at 1)

“Liability may not be imposed on supervisory personnel for the actions or omissions of their subordinates under the theory of respondeat superior.” (at 3)

“Mere negligent failure to protect an inmate from harm is not actionable under Section 1983.” (at 6)

FACTUAL BACKGROUND

Plaintiff, a former state prisoner, alleged that a prison case records analyst incorrectly labeled him as a child abuser on his legal status summary (LSS), which led to threats, extortion, and a physical assault causing a dislocated jaw, permanent fear, and PTSD. He sued the CDCR Secretary, Warden, the analyst, and his supervisor under 42 U.S.C. § 1983, claiming violations of the Eighth and Fourteenth Amendments based on failure to protect from violence and invasion of privacy.

PROCEDURAL HISTORY

Plaintiff filed a pro se civil rights complaint. The court screened the complaint and found it failed to state a claim, granting leave to amend. Plaintiff failed to file an amended complaint or communicate with the court. The magistrate judge issued findings and recommendations to dismiss the action with prejudice for failure to state a claim, failure to obey a court order, and failure to prosecute.

DISPOSITION

dismissed

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Farmer v. Brennan, 511 U.S. 825 (1994)
- City of Canton, Ohio v. Harris, 489 U.S. 378 (1989)
- Connick v. Thompson, 563 U.S. 51 (2011)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677 (9th Cir. 2009)
- Moss v. U.S. Secret Serv., 572 F.3d 962 (9th Cir. 2009)
- Simmons v. Navajo Cty., Ariz., 609 F.3d 1011 (9th Cir. 2010)
- Ewing v. City of Stockton, 588 F.3d 1218 (9th Cir. 2009)
- Jones v. Williams, 297 F.3d 930 (9th Cir. 2002)
- Taylor v. List, 880 F.2d 1040 (9th Cir. 1989)
- Starr v. Baca, 652 F.3d 1202 (9th Cir. 2011)
- Corales v. Bennett, 567 F.3d 554 (9th Cir. 2009)
- Redman v. Cty. of San Diego, 942 F.2d 1435 (9th Cir. 1991)
- Clement v. Gomez, 298 F.3d 898 (9th Cir. 2002)
- Morgan v. Morgensen, 465 F.3d 1041 (9th Cir. 2006)
- Johnson v. Lewis, 217 F.3d 726 (9th Cir. 2000)
- Labatad v. Corrs. Corp. of Amer., 714 F.3d 1155 (9th Cir. 2013)
- Gibson v. Cty. of Washoe, 290 F.3d 1175 (9th Cir. 2002)
- Clem v. Lomeli, 566 F.3d 1177 (9th Cir. 2009)
- Hearn v. Terhune, 413 F.3d 1036 (9th Cir. 2005)
- Myron v. Terhune, 476 F.3d 716 (9th Cir. 2007)
- Toguchi v. Chung, 391 F.3d 1051 (9th Cir. 2004)
- Seaton v. Mayberg, 610 F.3d 530 (9th Cir. 2010)
- Michenfelder v. Sumner, 860 F.2d 328 (9th Cir. 1988)
- Gillespie v. Civiletti, 629 F.2d 637 (9th Cir. 1980)
- Thompson v. Hous. Auth., 782 F.2d 829 (9th Cir. 1986)
- Ghazali v. Moran, 46 F.3d 52 (9th Cir. 1995)
- Ferdik v. Bonzelet, 963 F.2d 1258 (9th Cir. 1992)
- Malone v. U.S. Postal Serv., 833 F.2d 128 (9th Cir. 1987)
- Henderson v. Duncan, 779 F.2d 1421 (9th Cir. 1986)
- Carey v. King, 856 F.2d 1439 (9th Cir. 1988)

- *Anderson v. Air W.*, 542 F.2d 522 (9th Cir. 1976)
- *Pagtalunan v. Galaza*, 291 F.3d 639 (9th Cir. 2002)
- *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217 (9th Cir. 2006)
- *Wilkerson v. Wheeler*, 772 F.3d 834 (9th Cir. 2014)
- *Baxter v. Sullivan*, 923 F.2d 1391 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 OTHA GRAY, Case No. 1:23-cv-01285-BAM (PC) 12 Plaintiff, ORDER
DIRECTING CLERK OF COURT TO RANDOMLY ASSIGN DISTRICT JUDGE TO 13 v.
ACTION 14 ALLISON, et al., FINDINGS AND RECOMMENDATIONS TO DISMISS
ACTION, WITH PREJUDICE, FOR 15 Defendants. FAILURE TO STATE A CLAIM, FAILURE
TO OBEY COURT ORDER, AND FAILURE 16 TO PROSECUTE 17 (ECF No. 14) 18
FOURTEEN (14) DAY DEADLINE 19 20 I. Background 21 Plaintiff Otha Gray (“Plaintiff”) is a
former state prisoner proceeding pro se in this civil 22 rights action under 42 U.S.C. § 1983.

23 On October 15, 2025, the Court screened the complaint and found that it failed to state a 24
cognizable claim under 42 U.S.C. § 1983. (ECF No. 14.) The Court issued an order granting 25
Plaintiff leave to file a first amended complaint or a notice of voluntary dismissal within thirty 26
(30) days. (Id.)

The Court expressly warned Plaintiff that the failure to comply with the Court’s 27 order would
result in a recommendation for dismissal of this action, with prejudice, for failure to 28 obey a
court order and for failure to state a claim. (Id.) Plaintiff failed to file an amended 1 complaint or
otherwise communicate with the Court, and the deadline to do so has expired.

2 II. Failure to State a Claim 3 A. Screening Requirement 4 The Court is required to screen
complaints brought by prisoners seeking relief against a 5 governmental entity and/or against an
officer or employee of a governmental entity. 28 U.S.C. 6 § 1915A(a). Plaintiff’s complaint, or
any portion thereof, is subject to dismissal if it is frivolous 7 or malicious, if it fails to state a claim
upon which relief may be granted, or if it seeks monetary 8 relief from a defendant who is immune
from such relief.

28 U.S.C. §§ 1915A(b). 9 A complaint must contain “a short and plain statement of the claim
showing that the 10 pleader is entitled to relief...” Fed. R. Civ. P. 8(a)(2). Detailed factual
allegations are not 11 required, but “[t]hreadbare recitals of the elements of a cause of action,
supported by mere 12 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
(2009) (citing *Bell 13 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

While a plaintiff’s allegations are taken as 14 true, courts “are not required to indulge unwarranted
inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 15 572 F.3d 677, 681 (9th Cir. 2009) (internal

quotation marks and citation omitted). 16 To survive screening, Plaintiff's claims must be facially plausible, which requires 17 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable 18 for the misconduct alleged.

Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S. Secret 19 Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully 20 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility 21 standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969. 22 B. Plaintiff's Allegations 23 At the time of the events in the complaint, Plaintiff was housed in Corcoran State Prison.

24 Plaintiff names the following as defendants: (1) Kathleen Allison, Secretary for the California 25 Department of Corrections and Rehabilitation ("CDCR"), (2) Campbell, Warden, (3) J. Pruitt, 26 case records analyst ("CCRA"), (4) John Doe, case records supervisor. Each defendant is sued 27 individually. 28 /// 1 In claim 1, Plaintiff alleges threat to safety in violation of the Eighth Amendment.

2 Plaintiff alleges the job of a Case Records Analyst is to accurately record the information 3 received from the court so that it correctly reflects the charges and sentence. Any mistake could 4 double a sentence or unjustly label a man a child abuser. Inmates convicted of these crimes have 5 been beaten and killed in prison. 6 It is common knowledge that prisoners with sex or child abuse charges are extorted, 7 beaten, and killed.

All inmates who want to live in peace must prove they do not have bad 8 charges by showing their legal status summary ("LSS") to the gang leader and shot callers on 9 their yard. Prisoners get their LSS by requesting it through the mail from the Case Records 10 office, which prints and mails to the inmate. 11 Plaintiff does not have these bad charges, so he requested his LSS and it got mailed to him 12 on 12-21-22.

When he showed the LSS to a shot caller, that person noticed "notification 13 Required – child abuse" and several inmates immediately threatened Plaintiff, extorted from his 14 canteen and told him he must get his family to send money. This went on for 3 weeks. 15 Eventually on 1/14/23, Plaintiff was attacked on camera. He dislocated his jaw and caused him to 16 develop severe and permanent fear, stress, and PTSD.

Plaintiff suffered permanent damage to his 17 future safety because everyone believes Plaintiff is a child abuser. 18 After Plaintiff was assaulted, he went to the Program Office to tell staff, who placed him 19 in the "hole" ("ASU") for 72 hours before moving him to another yard. Plaintiff's wife called the 20 Ombudsman for Corcoran and later his counselor handed Plaintiff a new LSS where the child 21 abuse had been changed to "Notification required – inmates' family." The LSS is created by a 22 Case Records "specialist" or "Analyst" who reviews the abstract of Judgment,

Probation Report, 23 and Reporter's transcript of the sentence hearing and enters the information into the CDCR 24 computer system, and central file.

All of Plaintiff's documents show that Plaintiff's conviction is 25 for PC 273.5(a) "inflicting corporal injury on a spouse, etc." The LSS shows the correct charge, 26 so there is no explanation why the case records analyst J. Pruitt put that there was required child 27 abuse notification. 28 /// 1 Defendant J. Pruitt, CCRA, directly caused the wrongs Plaintiff suffered when he labeled 2 Plaintiff a child abuser, incorrectly and against all of the information available to the Analyst in 3 multiple documents, knowing that this label is dangerous.

It went beyond negligence to 4 deliberate indifference to the safety of Plaintiff. He had a duty to protect Plaintiff from violence 5 at the hands of other inmates. 6 Defendant John Doe, the case records supervisor, failed to oversee Defendant J. Pruitt and 7 either hired someone unqualified or failed to adequately train the analyst. 8 Since it is a matter of life or death over what the LSS shows, it is the case records analyst 9 who directly caused the wrong, The case records office supervisor, John Doe, failed to oversee 10 the analyst who caused the harm, hired someone unqualified for the position or failed to 11 adequately train the analyst.

12 CDCR Secretary Kathleen Allison and Warden Campbell are legally responsible for the 13 welfare of all inmates. 14 Plaintiff alleges a violation of the Fourteenth Amendment for a threat to safety. 15 Defendant CDCR Secretary Kathleen Allison and Warden Campbell created and perpetuated a 16 policy of custom where the method for an inmate to get his LSS is to write a request to the case 17 records office, who then prints it and mails it to the inmate.

Anyone can write a request 18 pretending to be someone else, and a LSS will be dropped in the mail which is sorted in a public 19 area where anyone can see it, left in a cell if the inmate is not in it. The LSS and the classification 20 chrono both have sensitive information on them, yet the classification chrono can only be gotten 21 in private through an inmate's counselor.

If Plaintiff LSS had been required to be given to him by 22 his counselor, the counselor would have seen sensitive information and brought it to Plaintiff's 23 attention and fixed the problem, Plaintiff's constitutional right would not have been violated. 24 The current system allows sensitive LSS information that should be confidential and private to 25 become accessible by everyone which puts some inmates lives unnecessarily in danger.

26 Plaintiff alleges he suffered a dislocated jaw that still hurts, permanent fear, stress, PTSD 27 and threat to Plaintiff's future safety due to being falsely labeled child abuser. 28 As remedies, Plaintiff seeks compensatory monetary and punitive damages. 1 C. Discussion 2 Plaintiff's complaint fails to state a cognizable claim under 42 U.S.C. § 1983. 3 1.

Federal Rule of Civil Procedure 8 4 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain "a short and plain 5 statement of the claim showing that the pleader is entitled to

relief.” Fed. R. Civ. P. 8(a). 6 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause 7 of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 8 (citation omitted).

Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a 9 claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. 10 at 555). While factual allegations are accepted as true, legal conclusions are not. *Id.*; see also 11 *Twombly*, 550 U.S. at 556–57; *Moss*, 572 F.3d at 969. 12 As explained below, Plaintiff’s complaint fails to state a claim.

13 2. Supervisory Liability 14 To the extent that Plaintiff seeks to hold Defendants Secretary Allison, Warden Campbell 15 and John Doe supervisor liable based solely upon their supervisory roles, Plaintiff may not do so. 16 Liability may not be imposed on supervisory personnel for the actions or omissions of their 17 subordinates under the theory of respondeat superior.

Iqbal, 556 U.S. at 676–77; *Simmons v. 18 Navajo Cty., Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir. 2010); *Ewing v. City of Stockton*, 588 F.3d 19 1218, 1235 (9th Cir. 2009); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). 20 Supervisors may be held liable only if they “participated in or directed the violations, or 21 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 22 (9th Cir.

1989); accord *Starr v. Baca*, 652 F.3d 1202, 1205–06 (9th Cir. 2011); *Corales v. 23 Bennett*, 567 F.3d 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any 24 personal participation if the official implemented “a policy so deficient that the policy itself is a 25 repudiation of constitutional rights and is the moving force of the constitutional violation.” 26 *Redman v. Cty. of San Diego*, 942 F.2d 1435, 1446 (9th Cir.

1991) (citations and quotations 27 marks omitted), abrogated on other grounds by *Farmer v. Brennan*, 511 U.S. 825 (1970). 28 /// 1 Plaintiff does not allege that Defendants were personally involved in any constitutional 2 deprivation. Further, there is no factual allegation that any policy is “so deficient that the policy 3 itself is a repudiation of constitutional rights and is the moving force of the constitutional 4 violation.” The policy alleged is not a repudiation of constitutional rights.

5 Plaintiff alleges John Doe supervisor failed to adequately train the records analyst. A 6 “failure to train” or “failure to supervise” theory can be the basis for a supervisor’s liability under 7 § 1983 in only limited circumstances, such as where the failure amounts to deliberate indifference. 8 See *City of Canton, Ohio v. Harris*, 489 U.S. 378, 387–90 (1989).

To establish a failure-to- 9 train/supervise claim, a plaintiff must show that “‘in light of the duties assigned to specific officers 10 or employees, the need for more or different training [or supervision] [was] obvious, and the 11 inadequacy so likely to result in violations of constitutional

rights, that the policy-makers... can reasonably be said to have been deliberately indifferent to the need.” *Clement v. Gomez*, 298 F.3d 13 898, 905 (9th Cir.

2002) (quoting *Canton*, 489 U.S. at 390). Ordinarily, a single constitutional violation by an untrained employee is insufficient to demonstrate deliberate indifference for purposes of failure to train. *Connick v. Thompson*, 563 U.S. 16 51, 62 (2011). Instead, a plaintiff must usually demonstrate “[a] pattern of similar constitutional violations by untrained employees,” *id.*, unless the need for training is “so obvious” and “so likely to result in the violation of constitutional rights,” that “the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury,” *Canton*, 489 U.S. at 390.

Plaintiff fails to allege facts to support liability on a failure to train basis. 3. Eighth Amendment – Failure to Protect The Eighth Amendment protects prisoners from inhumane methods of punishment and from inhumane conditions of confinement. *Farmer v. Brennan*, 511 U.S. 825 (1994); *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006).

Thus, no matter where they are housed, prison officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing, sanitation, medical care, and personal safety. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000) (quotation marks and citations omitted).

To establish a violation of the Eighth Amendment, the prisoner must “show that the officials acted with deliberate indifference...” *Labatad v. Corrs. Corp. of Amer.*, 714 F.3d 1155, 1160 (9th Cir. 2013) (citing *Gibson v. Cty. of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002)). Prison officials have a duty under the Eighth Amendment to protect prisoners from violence at the hands of other prisoners or others because being violently assaulted in prison is simply not part of the penalty that criminal offenders pay for their offenses against society.

Farmer, 511 U.S. at 833; *Clem v. Lomeli*, 566 F.3d 1177, 1181 (9th Cir.2009); *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005). However, prison officials are liable under the 9 Eighth Amendment only if they demonstrate deliberate indifference to conditions posing a substantial risk of serious harm to an inmate; and it is well settled that deliberate indifference occurs when an official acted or failed to act despite his knowledge of a substantial risk of serious harm.

Farmer, 511 U.S. at 834, 841; *Clem*, 566 F.3d at 1181; *Hearns*, 413 F.3d at 1040. Mere negligent failure to protect an inmate from harm is not actionable under Section 1983. See *Farmer*, 511 U.S. at 835, 114 S.Ct. 1970. To the extent Plaintiff’s claim concerns a housing determination, there is no constitutional violation. An inmate has no constitutional right to a particular security classification or housing.

17 Myron, 476 F.3d at 718 (9th Cir. 2007). In *Myron v. Terhune*, the Ninth Circuit held that a state
18 prisoner's allegedly improper classification to a higher-level security facility than indicated by
his 19 individual security classification did not violate the Eighth Amendment. *Myron*, 476 F.3d at
719. 20 As the court noted, because “the mere act of classification ‘does not amount to an
infliction of 21 pain,’ it ‘is not condemned by the Eighth Amendment.’ ” *Id.* (citation omitted).

22 Here, Plaintiff fails to adequately allege that Defendants J. Pruitt, case records analyst, or 23
John Doe, case records supervisor, knew of any specific risk of harm to Plaintiff from an assault
24 by an inmate. Plaintiff does not allege that Defendants shared the information with other
inmates 25 or had any knowledge that Plaintiff would share the information.

At most, Plaintiff alleges that 26 Defendants should have known of a risk of harm to Plaintiff
because Plaintiff would be sharing 27 the information. Plaintiff does not allege that he informed
Defendants of any specific threat of 28 harm that he faced. Plaintiff makes vague and conclusory
allegations that these Defendants knew 1 he faced a substantial risk of serious harm but fails to
explain or demonstrate they drew the 2 inference.

Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir. 2004). Plaintiff fails to state a 3 cognizable claim
against any Defendant because Plaintiff fails to allege any factual support that 4 any defendant was
aware that Plaintiff was at risk of serious harm and failed to take reasonable 5 action. 6 4. Privacy
7 To the extent Plaintiff is claiming some privacy interest in the LSS, the Court is not aware 8 of
any such protected right.

See, e.g., *Seaton v. Mayberg*, 610 F.3d 530, 534 (9th Cir. 2010) (a 9 prisoner does not have a
“constitutionally protected expectation of privacy in prison treatment 10 records when the state has
a legitimate interest in access to them.”); *Michenfelder v. Sumner*, 860 11 F.2d 328, 333 (9th Cir.
1988) (incarcerated prisoners retain only a limited right to bodily privacy).

12 5. Doe Defendants 13 “As a general rule, the use of ‘John Doe’ to identify a defendant is not
favored.” *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). Plaintiff is advised that John
Doe or Jane Doe 15 defendants (i.e., unknown defendants) cannot be served by the United States
Marshal until 16 Plaintiff has identified them as actual individuals and amended his complaint to
substitute names 17 for John Doe or Jane Doe.

18 III. Failure to Prosecute and Failure to Obey a Court Order 19 A. Legal Standard 20 Local Rule
110 provides that “[f]ailure... of a party to comply with these Rules or with 21 any order of the
Court may be grounds for imposition by the Court of any and all sanctions... 22 within the inherent
power of the Court.” District courts have the inherent power to control their 23 dockets and “[i]n
the exercise of that power they may impose sanctions including, where 24 appropriate,...
dismissal.” *Thompson v. Hous.*

Auth., 782 F.2d 829, 831 (9th Cir. 1986). A 25 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, 26 failure to obey a court order, or failure to comply with local rules. See, e.g., *Ghazali v. Moran*, 46 27 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 28 963 F.2d 1258, 1260–61 (9th Cir.

1992) (dismissal for failure to comply with an order requiring 1 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) 2 (dismissal for failure to comply with court order). 3 In determining whether to dismiss an action, the Court must consider several factors: 4 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its 5 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of 6 cases on their merits; and (5) the availability of less drastic sanctions.

Henderson v. Duncan, 779 7 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). 8 B. Discussion 9 Here, Plaintiff's first amended complaint is overdue, and he has failed to comply with the 10 Court's order.

The Court cannot effectively manage its docket if Plaintiff ceases litigating his 11 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal. 12 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a 13 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.

14 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against 15 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 16 639, 643 (9th Cir. 2002).

However, "this factor lends little support to a party whose 17 responsibility it is to move a case toward disposition on the merits but whose conduct impedes 18 progress in that direction," which is the case here. In *re Phenylpropanolamine (PPA) Products* 19 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). 20 Finally, the Court's warning to a party that failure to obey the court's order will result in 21 dismissal satisfies the "considerations of the alternatives" requirement.

Ferdik, 963 F.2d at 1262; 22 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court's October 15, 2025 screening 23 order expressly warned Plaintiff that his failure to file an amended complaint would result in a 24 recommendation of dismissal of this action, with prejudice, for failure to obey a court order and 25 for failure to state a claim. (ECF No. 14.)

Thus, Plaintiff had adequate warning that dismissal 26 could result from his noncompliance. 27 Additionally, at this stage in the proceedings there is little available to the Court that 28 would constitute a satisfactory lesser sanction while protecting the Court from further 1 unnecessary expenditure of its scarce resources.

Although Plaintiff is not proceeding in forma 2 pauperis in this action, it appears that monetary sanctions will be of little use and the preclusion 3 of evidence or witnesses is likely to have no effect given that Plaintiff has ceased litigating his 4 case. 5 IV. Conclusion and Recommendation 6 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a 7 District Judge to this action.

8 Furthermore, the Court finds that dismissal is the appropriate sanction and HEREBY 9 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim 10 pursuant to 28 U.S.C. § 1915A, for failure to obey a court order, and for Plaintiff's failure to 11 prosecute this action. 12 These Findings and Recommendation will be submitted to the United States District Judge 13 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b) (l).

Within fourteen 14 (14) days after being served with these Findings and Recommendation, the parties may file 15 written objections with the Court. The document should be captioned "Objections to Magistrate 16 Judge's Findings and Recommendation." Objections, if any, shall not exceed fifteen (15) pages 17 or include exhibits. Exhibits may be referenced by document and page number if already in 18 the record before the Court.

Any pages filed in excess of the 15-page limit may not be 19 considered. The parties are advised that failure to file objections within the specified time may 20 result in the waiver of the "right to challenge the magistrate's factual findings" on 21 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 22 923 F.2d 1391, 1394 (9th Cir.

1991)). 23 IT IS SO ORDERED. 24 25 Dated: December 1, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE 26 27 28