

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Alvarez v. Harder Mechanical Contractors

No. 1:23-cv-01162-JLT-BAM (E.D. Cal. July 15, 2025) · No. 1:23-cv-01162-JLT-BAM · Decided July 15, 2025

SUMMARY

The document contains Findings and Recommendations by a United States magistrate judge recommending dismissal of Sergio Alvarez’s action against Harder Mechanical Contractors. The recommendation is based on Plaintiff’s failure to comply with an order requiring a second amended complaint, failure to establish federal jurisdiction, and failure to state a cognizable discrimination or ADA claim. The recommendations were issued with a fourteen-day period for objections.

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	July 15, 2025
DOCKET	1:23-cv-01162-JLT-BAM
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a United States magistrate judge recommending dismissal of a pro se, in forma pauperis action for failure to obey an order, failure to establish subject matter jurisdiction, and failure to state a claim. The recommendation was submitted to the assigned district judge for review under 28 U.S.C. § 636(b)(1).
STANDARD OF REVIEW	The court applied the pleading-plausibility standard under Rules 8 and 10 and Ashcroft v. Iqbal and Bell Atlantic Corp. v. Twombly; it also applied the five-factor test governing dismissal for failure to prosecute or obey a court order.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations of a federal magistrate judge; no reporter citation appears.
PARTIES	Sergio Alvarez v. Harder Mechanical Contractors

TOPICS

civil procedure

pleadings

subject matter jurisdiction

ada discrimination

ada / disability

PRACTICE AREAS

civil procedure

employment law

civil rights

disability discrimination

QUESTIONS PRESENTED

1. Whether dismissal was warranted because Plaintiff failed to comply with the order requiring him to file a compliant second amended complaint.
2. Whether the amended complaint failed to satisfy Federal Rules of Civil Procedure 8 and 10.
3. Whether the amended complaint adequately established federal-question or diversity subject matter jurisdiction.
4. Whether the amended complaint stated a cognizable Title VII or Americans with Disabilities Act claim.

HOLDINGS

1. A district court may dismiss an action, including with prejudice, when a party fails to prosecute or obey a court order, after considering the applicable dismissal factors and providing adequate warning.
2. A complaint must provide a short and plain statement containing sufficient factual matter to make the claim plausible and must identify all parties in the caption and present claims in appropriately numbered paragraphs.
3. A plaintiff must adequately plead a basis for federal subject matter jurisdiction; failure to establish federal-question or diversity jurisdiction requires dismissal.
4. The amended complaint failed to state a cognizable Title VII or ADA discrimination claim because it did not allege facts connecting the alleged conduct to a protected Title VII characteristic or establish the elements and circumstances of an ADA violation.

KEY QUOTATIONS

“A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.” (at 6)

“The Court’s warning to a party that failure to obey the Court’s order will result in dismissal satisfies the “considerations of the alternatives” requirement.” (at 7)

FACTUAL BACKGROUND

Plaintiff alleged that while working on a reactor, a coworker made a remark concerning his use of one hand and that another individual sent him, apparently alone among approximately twenty workers, for a physical examination. He characterized the events as discrimination and sought damages for lost wages, benefits, and pain and suffering. His amended complaint did not identify the legal basis of the discrimination claim, provide sufficient facts concerning the alleged physical examination, or establish the citizenship of all referenced individual defendants.

PROCEDURAL HISTORY

Plaintiff filed the action on August 4, 2023. After screening the complaint, the court granted leave to amend; following Plaintiff's failure to timely amend, the court initially recommended dismissal, then vacated that recommendation after Plaintiff objected and granted another opportunity to amend. Plaintiff filed a first amended complaint, which the court found deficient under Rules 8 and 10, for failure to adequately allege jurisdiction, and for failure to state a cognizable claim. Plaintiff did not file the ordered second amended complaint by the deadline and instead filed a statement, prompting the present recommendation of dismissal.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57, 570 (2007)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009)
- Martinez v. Davey, No. 16-cv-1658-AWI-MJS (PC), 2018 WL 898153, at *5 (E.D. Cal. Feb. 15, 2018)
- Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994)
- Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993)
- Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546 (1986)
- Morongo Band of Mission Indians v. California State Bd. of Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988)
- Republican Party of Guam v. Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002)
- Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 8-9 (1983)
- Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987)
- Smith v. Clark County School Dist., 727 F.3d 950, 955 (9th Cir. 2013)
- Nunes v. Wal-Mart Stores, Inc., 164 F.3d 1243, 1246 (9th Cir. 1999)
- Indergard v. Georgia-Pac. Corp., 582 F.3d 1049, 1052-53 (9th Cir. 2009)
- Fredenburg v. Contra Costa County Dep't of Health Servs., 172 F.3d 1176, 1182 (9th Cir. 1999)
- Yin v. State of California, 95 F.3d 864, 868 (9th Cir. 1996)
- Glover v. Brown, No. 1:18-CV-0853-DAD-JLT, 2018 WL 3241072, at *2 (E.D. Cal. July 2, 2018)
- Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986)
- Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- Malone v. U.S. Postal Serv., 833 F.2d 128, 130-33 (9th Cir. 1987)
- Henderson v. Duncan, 779 F.2d 1421, 1423-24 (9th Cir. 1986)
- Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988)

- Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976)
- Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002)
- In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1228 (9th Cir. 2006)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 SERGIO ALVAREZ, Case No. 1:23-cv-01162-JLT-BAM 12 Plaintiff,
FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSAL OF ACTION 13 v.
FOR FAILURE TO OBEY COURT ORDER AND FAILURE TO STATE A CLAIM 14 HARDER
MECHANICAL CONTRACTORS, (Doc. 17) 15 Defendant. FOURTEEN-DAY DEADLINE 16
17 Plaintiff Sergio Alvarez (“Plaintiff”) proceeds pro se and in forma pauperis in this civil 18
action.

For the reasons that follow, the Court will recommend that this action be dismissed for 19 failure
to obey a court order and for failure to state a claim. 20 I. Background 21 Plaintiff initiated this
action on August 4, 2023. (Doc. 1.)

On December 17, 2024, the 22 Court screened Plaintiff’s complaint pursuant to 28 U.S.C. §
1915(e)(2), and granted him leave to 23 amend within thirty days. (Doc. 11.) On February 5, 2025,
after Plaintiff failed to timely amend 24 his complaint, the Court issued findings and
recommendations to dismiss the action for failure to 25 obey a court order and for failure to state a
claim.

(Doc. 13.) Plaintiff objected to the dismissal. 26 (Doc. 14.) On February 25, 2025, upon review of
Plaintiff’s objections, the Court vacated the 27 findings and recommendations and directed
Plaintiff to file a first amended complaint within 28 thirty days. (Doc. 15.) Plaintiff filed a first
amended complaint on February 27, 2025. (Doc. 16.) 1 On June 6, 2025, the Court screened
Plaintiff’s first amended complaint and determined that the 2 amended complaint failed to comply
with the pleading requirements of Federal Rules of Civil 3 Procedure 8 and 10, failed to
adequately allege this Court’s jurisdiction, and failed to state a 4 cognizable claim upon which
relief could be granted.

(Doc. 17.) The Court granted Plaintiff a 5 final opportunity to amend his complaint within thirty
(30) days of service of the Court’s order. 6 (Id.) Plaintiff was expressly warned that if he failed to
file an amended complaint in compliance 7 with the Court’s order, then the Court would
recommend dismissal of this action, with prejudice, 8 for failure to obey a court order and for
failure to state a claim upon which relief may be granted.

9 (Id. at 8.) In lieu of filing a second amended complaint, Plaintiff filed a statement, which states:
10 “I never got a respond on this case from over 1 years from the last one. So how could it be fair
if 11 I dont get a notice and suddenly I get a 30 day deadline its not fair I wish you guys could a
good 12 look on this I really aprieiated.”¹ (Doc. 18) (unedited text).

The deadline for Plaintiff to file his 13 second amended complaint has passed and Plaintiff has not
complied with the Court’s order. The 14 Court therefore will recommend dismissal of this action.
15 II. Failure to State a Claim 16 A. Screening Requirement and Standard 17 The Court screens
complaints brought by persons proceeding in pro se and in forma 18 pauperis.

28 U.S.C. § 1915(e)(2). Plaintiff’s complaint, or any portion thereof, is subject to 19 dismissal if it
is frivolous or malicious, if it fails to state a claim upon which relief may be 20 granted, or if it
seeks monetary relief from a defendant who is immune from such relief. 28 21 U.S.C. § 1915(e)
(2)(B)(ii). 22 A complaint must contain “a short and plain statement of the claim showing that the
23 pleader is entitled to relief....” Fed.

R. Civ. P. 8(a)(2). Detailed factual allegations are not 24 required, but “[t]hreadbare recitals of the
elements of a cause of action, supported by mere 25 conclusory statements, do not suffice.”
Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell 26 27 1 Plaintiff claims that he did not get
notice. (Doc. 18.)

The Court has served Plaintiff with all notices and orders at his address of record. The documents
or orders served on Plaintiff have not been returned as 28 undeliverable. 1 Atlantic Corp. v.
Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as 2 true, courts “are
not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 3 572 F.3d 677,
681 (9th Cir.

2009) (internal quotation marks and citation omitted). 4 To survive screening, Plaintiff’s claims
must be facially plausible, which requires 5 sufficient factual detail to allow the Court to
reasonably infer that each named defendant is liable 6 for the misconduct alleged. Iqbal, 556 U.S.
at 678 (quotation marks omitted); Moss v. U.S. Secret 7 Serv., 572 F.3d 962, 969 (9th Cir.

2009). The sheer possibility that a defendant acted unlawfully 8 is not sufficient, and mere
consistency with liability falls short of satisfying the plausibility 9 standard. Iqbal, 556 U.S. at 678
(quotation marks omitted); Moss, 572 F.3d at 969. 10 B. Summary of Plaintiff’s Allegations 11
Plaintiff drafted his amended complaint using the form provided by this Court.

The 12 caption of the amended complaint lists a single defendant, Harder Mechanical Contractors.
(Doc. 13 16 at 1.) However, Plaintiff also lists the following individuals as named defendants:
Montambo, 14 Craig, Ronnie, and Tim. (Id. at 2-3.) Plaintiff does not identify whether the basis of
the Court’s 15 jurisdiction is either federal question or diversity of citizenship.

However, in the section of the 16 form requiring Plaintiff to list the specific federal statutes, federal treaties, or provisions of the 17 United States Constitution that are at issue for federal question jurisdiction, he states, 18 “discrimination.” (Id. at 4.)

In the section of the form for identifying the basis for diversity of 19 citizenship, Plaintiff states that he is a citizen of California, and that Defendant Harder 20 Mechanical is a citizen of Oregon with its principal place of business in Oregon. (Id. at 4-5) In 21 the section in which he is asked to specify the amount in controversy, Plaintiff states, “I am 22 asking for 400,00 thousand for loss wages and Pain and suffering.” (Id. at 5.)

In the Statement of 23 Claim section, Plaintiff alleges, “was working on a reactor with Montambo and my co worker 24 Luis and a tight pot when Montambo tells me he doesn’t need a one handed [expletive] and next 25 day Craig send me and only me to get a physical of all 20 people.” (Id.)

As requested relief, 26 Plaintiff states, “I got discrimated [sic] and loss of wages and benefits and only one to get a 27 Physical.” (Id. at 6.) 28 Plaintiff attaches two exhibits to his amended complaint: (1) an unsigned, typewritten 1 statement from Plaintiff’s apparent co-worker; and (2) the second page of a two-page check-the- 2 box form with the box checked for “This Full Duty position is APPROVED.” (Doc.

16 at 7-9.) 3 C. Discussion 4 1. Federal Rule of Civil Procedure 8 5 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain 6 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed 7 factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, 8 supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citation 9 omitted).

Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to 10 relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570, 11 127 S.Ct. at 1974). While factual allegations are accepted as true, legal conclusions are not. Id.; 12 see also *Twombly*, 550 U.S. at 556–557. 13 Plaintiff’s amended complaint is not a plain statement of his claims.

While short, 14 Plaintiff’s amended complaint does not clearly state what happened, when it happened, and who 15 was involved. The nature of Plaintiff’s discrimination claim is unclear. Although Plaintiff 16 broadly alleges discrimination, he does not provide sufficient details regarding the nature of his 17 discrimination claim or the circumstances of the alleged discrimination beyond that he was 18 required to obtain a physical related to his hand.

He also does not link defendants Ronnie and 19 Tim to any of the allegations in his form complaint. Because Plaintiff’s complaint fails to 20 include sufficient factual allegations, the Court cannot conclude that he has stated a cognizable 21 claim for relief. 22 The Court acknowledges

that the typewritten statement attached to his amended 23 complaint includes detailed factual allegations, which could plausibly state a claim for relief if 24 included in his amended complaint.

However, the Court has not considered that statement in 25 assessing whether Plaintiff has stated a cognizable claim because that statement appears to have 26 been written by someone other than Plaintiff and is unsigned. 27 2. Federal Rule of Civil Procedure 10 28 Plaintiff's complaint does not have a caption that contains the name of purported 1 defendants Montambo, Craig, Ronnie, and Tim that are identified in the body of the form 2 complaint, in violation of Rule 10(a).

See Fed. R. Civ. P. 10(a) (Rule 10(a) requires that 3 plaintiffs include the names of all parties in the caption of the complaint). Rule 10 of the Federal 4 Rules of Civil Procedure requires, among other things, that a complaint (a) state the names of 5 "all the parties" in the caption; and (b) state a party's claims in sequentially "numbered 6 paragraphs, each limited as far as practicable to a single set of circumstances." Fed.

R. Civ. P. 7 10. Plaintiff's complaint is subject to dismissal on this basis alone. See *Martinez v. Davey*, No. 8 16-cv-1658-AWI-MJS (PC), 2018 WL 898153, at *5 (E.D. Cal. Feb. 15, 2018) (dismissing, 9 among other reasons, because "Plaintiff makes allegations against numerous non-party 10 individuals not named in the caption of the complaint" in violation of Rule 10(a)).

11 3. Federal Court Jurisdiction 12 Federal courts are courts of limited jurisdiction and may adjudicate only those cases 13 authorized by the United States Constitution and Congress. *Kokkonen v. Guardian Life Ins. Co.*, 14 511 U.S. 375, 377 (1994). "Federal courts are presumed to lack jurisdiction, 'unless the contrary 15 appears affirmatively from the record.'" *Casey v. Lewis*, 4 F.3d 1516, 1519 (9th Cir.

1993) 16 (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 (1986)). Without jurisdiction, 17 the district court must dismiss the case. See *Morongo Band of Mission Indians v. California State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988). Generally, there are two bases for 19 subject matter jurisdiction: (1) diversity jurisdiction; and (2) federal question jurisdiction.

28 20 U.S.C. §§ 1331, 1332. 21 a. Federal Question Jurisdiction 22 Pursuant to 28 U.S.C. § 1331, federal district courts have jurisdiction over "all civil 23 actions arising under the Constitution, laws, or treaties of the United States." "A case 'arises 24 under' federal law either where federal law creates the cause of action or 'where the vindication 25 of a right under state law necessarily turn[s] on some construction of federal law.'" *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088–89 (9th Cir.

2002) (quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8–9 (1983)). The presence or absence of 28 federal-question jurisdiction is governed by the "well-pleaded complaint rule." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

Under the well-pleaded complaint rule, “federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Id.* Plaintiff does not allege any violation arising under the Constitution, laws, or treaties of the United States upon which relief in this civil action is premised. He alleges only “discrimination” without reference to a constitutional violation or federal statute.

b. Diversity Jurisdiction Pursuant to 28 U.S.C. § 1332, federal district courts have diversity jurisdiction over civil actions “where the matter in controversy exceeds the sum or value of \$75,000,” and where the matter is between “citizens of different States.” 28 U.S.C. § 1332(a)(1). Plaintiff’s amended complaint does not adequately allege that the parties’ citizenship is completely diverse.

Plaintiff alleges that he is a citizen of California, and that Defendant Harder Mechanical is a citizen of Oregon with its principal place of business in Oregon. (Doc. 16 at 4- 14 5.) However, he does not allege the citizenship of the other referenced defendants—Montambo, Craig, Ronnie, or Tim. (*Id.* at 5.)

Although Plaintiff lists the same address for the individual defendants in Oregon, the Court notes that this address is the address for Defendant Harder Mechanical. (*Id.* at 2-3.) The address of Harder Mechanical, without more, is insufficient to establish the citizenship of the individual defendants. 4. Title VII Discrimination “Title VII makes it an “unlawful employment practice for an employer... to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C.A. § 2000e-2(a)(1).

Plaintiff’s amended complaint, like his original complaint, fails to allege any facts to show discrimination based on “race, color, religion, sex, or national origin.” 5. Violation of the Americans with Disabilities Act (“ADA”) A prima facie case of discrimination under the ADA requires a plaintiff to demonstrate: (1) that he is disabled within the meaning of the ADA; (2) that he is a qualified individual with a disability; and (3) that he was discriminated against because of his disability.

Smith v. Clark County School Dist., 727 F.3d 950, 955 (9th Cir. 2013). “Disabled” under the ADA means an individual with “[a] physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment...” 42 U.S.C. § 12102(1). A qualified individual is “an ‘individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.’” *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1246 (9th Cir.

1999) (quoting 42 U.S.C. § 12111(8)). 9 Plaintiff does not allege that he is a disabled person within the meaning of the ADA. 10 Plaintiff's primary allegations relate to being the only person required to undergo a physical 11 examination.

Under the ADA, an employer may not require a current employee to undergo a 12 medical examination unless the examination "is shown to be job-related and consistent with 13 business necessity." 42 U.S.C. § 12112(d)(4)(A); see *Indergard v. Georgia-Pac. Corp.*, 582 F.3d 14 1049, 1052–53 (9th Cir. 2009). This prohibition applies to all employees, regardless of whether 15 they qualify as "disabled" under the ADA.

Indergard, 582 F.3d at 1052–53; *Fredenburg v. 16 Contra Costa County Dep't of Health Servs.*, 172 F.3d 1176, 1182 (9th Cir. 1999). However, "[a] 17 covered entity may make inquiries into the ability of an employee to perform job-related 18 functions." 42 U.S.C. § 12112(d)(4)(B). Medical inquiries are job-related and consistent with 19 business necessity when an employer has good cause to determine whether an employee is 20 capable of performing his job-related functions.

See *Yin v. State of California*, 95 F.3d 864, 868 21 (9th Cir. 1996); *Glover v. Brown*, No. 1:18-CV-0853-DAD-JLT, 2018 WL 3241072, at *2 (E.D. 22 Cal. July 2, 2018). 23 There are insufficient factual allegations in the amended complaint for the Court to 24 determine whether any defendant made an inquiry in violation of the provisions of the ADA. 25 Although Plaintiff alleges that "Craig" sent him to get a physical and that he was the "only one to 26 get a Physical," he has not alleged what inquiry was made or when, nor has he adequately 27 alleged the circumstances precipitating the inquiry.

He also has not alleged that the physical 28 examination or inquiry was not job-related or consistent with business necessity or that the 1 inquiry was not designed to determine his ability to work. Without basic factual information, the 2 Court is unable to find that Plaintiff has stated a cognizable claim for violation of the ADA. 3 III. Failure to Obey a Court Order 4 A. Legal Standard 5 Local Rule 110 provides that "[f]ailure... of a party to comply with these Rules or with 6 any order of the Court may be grounds for imposition by the Court of any and all sanctions...

7 within the inherent power of the Court." District courts have the inherent power to control their 8 dockets and "[i]n the exercise of that power they may impose sanctions including, where 9 appropriate,... dismissal." *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A 10 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, 11 failure to obey a court order, or failure to comply with local rules.

See, e.g., *Ghazali v. Moran*, 12 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. 13 Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order 14 requiring amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 15 1987) (dismissal for failure to comply with court order).

16 In determining whether to dismiss an action, the Court must consider several factors: (1) 17 the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its 18 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of 19 cases on their merits; and (5) the availability of less drastic sanctions.

Henderson v. Duncan, 20 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988). 21 B. Discussion 22 Here, Plaintiff's amended complaint is overdue. (See Doc. 17.) The action cannot 23 proceed without Plaintiff's cooperation and compliance with the Court's order.

Moreover, the 24 Court cannot hold this case in abeyance awaiting compliance by Plaintiff. The Court 25 additionally cannot effectively manage its docket if Plaintiff ceases litigating his case. Thus, the 26 Court finds that both the first and second factors weigh in favor of dismissal. 27 The third factor, risk of prejudice to the defendant, also weighs in favor of dismissal, as a 28 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.

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

However, "this factor lends little support to a party whose 4 responsibility it is to move a case toward disposition on the merits but whose conduct impedes 5 progress in that direction," which is the case here. In re Phenylpropanolamine (PPA) Prods. 6 Liab. Litig., 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). 7 Finally, the Court's warning to a party that failure to obey the Court's order will result in 8 dismissal satisfies the "considerations of the alternatives" requirement.

Ferdik, 963 F.2d at 9 1262; Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court's June 6, 2025 screening 10 order expressly warned Plaintiff that his failure to comply would result in a recommendation for 11 dismissal of this action. (Doc. 17 at 8.) Plaintiff had adequate warning that dismissal could 12 result from his noncompliance. 13 Additionally, at this stage in the proceedings there is little available to the Court that 14 would constitute a satisfactory lesser sanction while protecting the Court from further 15 unnecessary expenditure of its scarce resources.

Plaintiff's in forma pauperis status in this action 16 indicates that monetary sanctions are of little use, and the preclusion of evidence or witnesses is 17 likely to have no effect given that Plaintiff has not filed a second amended complaint. 18 IV. Conclusion and Recommendation 19 For the reasons stated, it is **HEREBY RECOMMENDED** that this action be dismissed 20 based on Plaintiff's failure to obey the Court's order, failure to establish this Court's jurisdiction, 21 and for failure to state a cognizable claim.

22 These Findings and Recommendations will be submitted to the United States District 23 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 24 fourteen (14) days after being served with these Findings and Recommendations, Plaintiff may 25 file written objections with the court.

The document should be captioned “Objections to 26 Magistrate Judge’s Findings and Recommendations.” Objections, if any, shall not exceed 27 fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page 28 number if already in the record before the Court. Any pages filed in excess of the 15-page 1 limit may not be considered. Plaintiff is advised that failure to file objections within the 2 specified time may result in the waiver of the “right to challenge the magistrate’s factual 3 findings” on appeal.

Wilkerson v. Wheeler, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing Baxter 4 v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 5 IT IS SO ORDERED. 6 7 Dated: July 15, 2025 /s/ Barbara A. McAuliffe _ UNITED STATES MAGISTRATE JUDGE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28