

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

William H. Brandstatt v. Clark, et al.

Brandstatt v. Clark · No. 1:21-cv-01600-KES-BAM (PC) · Decided November 20, 2025

SUMMARY

The document contains a magistrate judge’s Findings and Recommendations in a prisoner civil-rights action under 42 U.S.C. § 1983. It recommends dismissal with prejudice for failure to state a claim, failure to obey a court order, and failure to prosecute after the plaintiff failed to file a second amended complaint or otherwise respond to the court’s screening order.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe, United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	November 20, 2025
DOCKET	1:21-cv-01600-KES-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal with prejudice of a prisoner's 42 U.S.C. § 1983 action for failure to state a claim, failure to obey a court order, and failure to prosecute.
STANDARD OF REVIEW	The court applied the pleading-plausibility standard under Federal Rule of Civil Procedure 8 and Ashcroft v. Iqbal, and considered the Ninth Circuit's factors governing dismissal for failure to prosecute or obey a court order.
PRECEDENTIAL VALUE	Unknown; findings and recommendations of a magistrate judge in a district court action, with no reported citation.
PARTIES	William H. Brandstatt v. K. Clark, A. Mehta, M. Gamboa, Lirones, Celia Bell, T. Campbell

TOPICS

- sanctions
- pleadings
- civil procedure
- section 1983
- prisoners rights

PRACTICE AREAS

civil procedure

civil rights

prisoner litigation

constitutional law

remedies

QUESTIONS PRESENTED

1. Whether the first amended complaint failed to satisfy Federal Rule of Civil Procedure 8 and state a plausible claim for relief under 42 U.S.C. § 1983.
2. Whether Plaintiff's supervisory-liability allegations were insufficient because they relied on respondeat superior rather than personal participation, direction, knowledge, or a constitutionally deficient policy.
3. Whether the first amended complaint improperly joined unrelated claims and defendants under Federal Rules of Civil Procedure 18 and 20.
4. Whether dismissal with prejudice was warranted because Plaintiff failed to obey the court's order and failed to prosecute the action.

HOLDINGS

1. A prisoner's complaint must provide a short, plain, simple, concise, and direct statement containing sufficient factual matter to state a facially plausible claim; conclusory allegations and threadbare recitals are insufficient.
2. Supervisory personnel may not be held liable under section 1983 solely because of their positions or under a respondeat superior theory; liability requires personal participation or direction, knowledge of violations coupled with failure to act, a qualifying causal connection, or implementation of a constitutionally deficient policy that is the moving force of the violation.
3. Unrelated claims against unrelated defendants may not be joined in one action; joinder under Rule 20 requires that the right to relief arise from the same transaction or occurrence and involve a common question of law or fact, after which Rule 18 permits multiple claims against a properly joined party.
4. A district court may dismiss an action with prejudice for failure to prosecute, failure to obey a court order, or failure to comply with local rules after considering the relevant dismissal factors, including the public interest in expeditious resolution, docket management, prejudice, disposition on the merits, and availability of less drastic sanctions.

KEY QUOTATIONS

"In short, the FAC consists neither of "short and plain" statements of Plaintiff's claims, nor are the allegations in it "simple, concise and direct" as Rule 8 requires." (at 5)

"Liability may not be imposed on supervisory personnel for the actions or omissions of their subordinates under the theory of respondeat superior." (at 6)

"Plaintiff may not bring unrelated claims against unrelated parties in a single action." (at 7)

"Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim, for failure to obey a court order, and for Plaintiff's failure to prosecute this action." (at 9)

FACTUAL BACKGROUND

Plaintiff is a state prisoner proceeding pro se and in forma pauperis under 42 U.S.C. § 1983. His first amended complaint asserted claims concerning COVID-19 exposure, medical prescriptions and treatment, dental floss, a pillow, prison grievance procedures, access to courts, and legal mail against employees of California State Prison–Corcoran. After the court found the amended complaint deficient and granted extensions to permit amendment or another response, Plaintiff failed to comply with the court's October 10, 2025 order or otherwise communicate with the court.

PROCEDURAL HISTORY

Plaintiff filed a first amended complaint asserting multiple constitutional and medical-care-related claims. On August 27, 2025, the court screened the amended complaint, found that it failed to state a claim, and granted leave to amend or otherwise respond. After granting extensions on September 11 and October 10, 2025, the court warned that noncompliance could result in dismissal. Plaintiff filed neither a second amended complaint nor another response, prompting these findings and recommendations.

DISPOSITION

other

REMAND INSTRUCTIONS

The magistrate judge recommended dismissal with prejudice. The findings and recommendations were to be submitted to the assigned United States district judge, with the parties given fourteen days to file objections.

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009)
- Knapp v. Hogan, 738 F.3d 1106, 1108-09 (9th Cir. 2013)
- Simmons v. Navajo County, Arizona, 609 F.3d 1011, 1020-21 (9th Cir. 2010)
- Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009)
- Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002)
- Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)
- Starr v. Baca, 652 F.3d 1202, 1205-06 (9th Cir. 2011)
- Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009)
- Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991)
- Farmer v. Brennan, 511 U.S. 825 (1970)
- Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979)
- Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978)

- Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
- Owens v. Hinsley, 635 F.3d 950, 952 (7th Cir. 2011)
- George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007)
- Coughlin v. Rogers, 130 F.3d 1348, 1349, 1351 (9th Cir. 1997)
- Thompson v. Housing Authority, 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, 1260-62 (9th Cir. 1992)
- Malone v. United States Postal Service, 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) Products Liability Litigation, 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

William H. Brandstatt v. Clark, et al.

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 WILLIAM H. BRANDSTATT, Case No. 1:21-cv-01600-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 ORDER, AND FAILURE
 14 CLARK, et al., TO PROSECUTE 15 Defendants. (ECF Nos. 30, 32, 35)

16 FOURTEEN (14) DAY DEADLINE

17 18 I. Background 19 Plaintiff William H. Brandstatt (“Plaintiff”) is a state prisoner proceeding
 pro se and in 20 forma pauperis in this civil rights action under 42 U.S.C. § 1983. 21 On August
 27, 2025, the Court screened the first amended complaint and found that it 22 failed to state any
 claim upon which relief may be granted. (ECF No. 30.) The Court granted 23 Plaintiff leave to
 either file a second amended complaint, notify the Court that he wishes to stand 24 on the first
 amended complaint, or voluntarily dismiss this case, within twenty-one (21) days. 25 (Id.) Plaintiff
 was granted an extension of time to respond to the Court’s screening order on
 26 September 11, 2025. (ECF No. 32.) Following resolution of Plaintiff’s pending motion to
 27 appoint counsel, Plaintiff was granted a further extension of time to respond to the Court’s 28

screening order on October 10, 2025. (ECF No. 35.) The Court expressly warned Plaintiff that 1 the failure to comply with the Court’s order would result in a recommendation for dismissal of 2 this action. (Id.) Plaintiff failed to file an amended complaint or otherwise communicate with the 3 Court, and the deadline to do so has expired. 4 II. Failure to State a Claim 5 A. Screening Requirement 6 The Court is required to screen complaints brought by prisoners seeking relief against a 7 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. 8 § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous 9 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary 10 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b). 11 A complaint must contain “a short and plain statement of the claim showing that the 12 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 13 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere 14 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 15 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as 16 true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 17 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). 18 To survive screening, Plaintiff’s claims must be facially plausible, which requires 19 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable 20 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret 21 Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully 22 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility 23 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969. 24 B. Plaintiff’s Allegations 25 Plaintiff is an inmate who is currently incarcerated at California State Prison – Corcoran 26 (“CSP-Corcoran”). He names six individuals as Defendants in this matter, all of whom were 27 employed at CSP-Corcoran at the time of incidents in question: Warden K. Clark; Dr. A. Mehta 28 (primary care provider); Appeals Coordinator M. Gamboa; Head Librarian Lirones; Chief 1 Medical Officer Celia Bell, and Associate Warden T. Campbell. (ECF No. 16 at 1–4.) He sues 2 Defendants Clark, Mehta, Bell, and Gamboa in their personal capacities. (Id. at 12, 14.) 3 1. Claim One: 4 Plaintiff raises five subclaims under Claim One. 5 a. Failure to Protect from COVID-19 Outbreak 6 The first subclaim is that Defendant Clark violated his right to safety when in May 2020, 7 during a ten-hour bus ride, he was forcibly placed in close proximity to other inmates who may 8 have been infected with COVID-19, and when in October 2021, the prison had another outbreak 9 of the virus, at least one guard (unidentified) had not been vaccinated, thereby deliberately 10 endangering the health and possibly the life of inmates at CSP-Corcoran. (ECF No. 16 at 5.) 11 Plaintiff also claims that the medical staff refused to provide a consistent supply of medication, as 12 well as making arbitrary treatment decisions without consulting the patient, or obtaining consent. 13 Id. Plaintiff claims that Defendant Clark is “responsible for the conduct of every staff member [at 14 CSP-Corcoran],” and that Defendant Bell is to be held responsible for

medical staffs conduct. 15 (See *id.* (brackets added).) 16 b. Deliberate Indifference to Medical Need: Prescription Change 17 In the next subclaim, Plaintiff alleges that Defendant Mehta was deliberately indifferent to 18 his serious medical need when, upon Plaintiff's arrival at CSP-Corcoran, Defendant Mehta 19 arbitrarily changed two of Plaintiff's medications without consulting him and without his consent. 20 (ECF No. 16 at 6.) He asserts that the medications Defendant Mehta cancelled was his 400 mg 21 ibuprofen prescription and his 80 mg Simethicone prescription. (*Id.* at 6–7.) 22 Ultimately, Plaintiff states that at or around July 5, 2020, his full 80-mg Simethicone 23 prescription was re-prescribed for him. (*Id.*) On that day, however, Plaintiff 24 asserts that he “made it very clear” to Defendant Mehta that he “wanted [his] rights,” as they were 25 stated in the Patient's Bill of Rights. (ECF No. 16 at 7–8 (brackets added).) 26 Plaintiff states that he has no way of identifying individual medical staff at CSP-Corcoran 27 because they go out of their way not to be identified. (See ECF No. 16 at 8.) He further argues 28 that this makes Defendant Bell responsible, and that Defendant Clark must take responsibility as 1 well. (*Id.*) 2 c. Malpractice Due to Prescription of Incorrect Test Preparation 3 In this claim, Plaintiff alleges that he was the victim of malpractice when, on November 4 12, 2020, after having undergone several days of preparation for what he had been told would be 5 a colonoscopy, upon his arrival at the hospital he learned that he had been scheduled for an upper 6 gastrointestinal procedure instead. (ECF No. 16 at 9.) 7 Plaintiff states that the preparation for what he believed would be a colonoscopy led him 8 to foul his clothes and bedding the morning of November 12, 2020. (ECF No. 16 at 8.) He 9 believes that this was retaliatory because of his instance on the Patient's Bill of Rights. (*Id.*) 10 d. Deliberate Indifference to Medical Need: Dental Floss 11 Next, Plaintiff claims that he was not been provided with enough dental floss, which he 12 says is critical to his dental health as he only has 9 teeth, and he already has heavy bone loss in 13 the lower jaw. (ECF No. 16 at 9.) He states that the dental floss picks that he had were taken 14 from his property at Chino. (*Id.*) He further states that he requested dental floss and/or picks 15 because they are standard inmate supplies, but he has been told that “they don't do that [at CSP- 16 Corcoran].” (ECF No. 16 at 9–10 (brackets added).) He states that he specifically requested 17 dental floss on 6/3/2020 and it took staff nearly a year to finally start providing it. (*Id.* at 10.) 18 e. Deliberate Indifference to Medical Need: Denial of a Pillow 19 In Claim One, Plaintiff also contends that he has been dealing with a degenerative disc 20 issue since 2012. (ECF No. 16 at 10–11.) Because of it, he needs a pillow to support his neck 21 and head when he sleeps. (See *id.* at 11.) Plaintiff further states that it took almost a year of 22 trying to resolve the problem himself when he “discovered the American Disabilities Act” and 23 “finally got a pillow.” (*Id.*) However, he states that during that period his condition was badly 24 aggravated resulting in dramatically increased pain. (*Id.*) He contends that he has “spikes” in 25 pain for several seconds, one to three times a day. (*Id.*) 26 Plaintiff states that a neurosurgeon agreed to do related surgery for the problem but the 27 medical committee at CSP-Corcoran denied it. (ECF No. 16 at 11.) He asserts that he has no 28 access to who is on the medical committee. (*Id.*) 1 2. Claim Two 2 a. Deprivation of Right to Redress

Grievances by Defendant Gamboa 3 In Claim Two, Plaintiff contends that he was deprived of his right under the First 4 Amendment “to redress government” since, as of March of 2020, “they” have not provided 5 appropriate inmate grievance/appeal forms for the “new” procedures, nor provided Title 15 for 6 guidelines. (See ECF No. 16 at 13.) As a result, Plaintiff claims they do not have a legal 7 grievance/appeal procedure at the prison. Plaintiff claims that this situation is the responsibility 8 of Defendant Gamboa. (Id.) Defendant Gamboa, Plaintiff asserts, is personally liable because he 9 “contin[ues] to promote an unlawful, unconstitutional, and abusive grievance / appeals system.” 10 (Id. (brackets added).) 11 b. Supervisory Liability of Defendant Clark / No Grievance System 12 Plaintiff further claims that as the Warden of CSP-Corcoran, Defendant Clark, is 13 “responsible for the conduct of every staff person working in [CSP-Corcoran].” (ECF No. 16 at 14 14.) Thus, Warden Clark is also responsible for the prisons failure to have an adequate 15 grievance/appeal system. (Id.) 16 3. Claim Three 17 a. Denial of Access to Courts 18 In Claim Three, Plaintiff claims that his right to access to the courts was violated when 19 Defendant Lirones, the head librarian at CSP-Corcoran’s prison library, prevented him from 20 making legal copies and told him to give his documents to the librarian so that they could be 21 processed without his supervision. (See ECF No. 16 at 15.) Plaintiff further contends that after 22 he filed a grievance about the decision on April 16, 2021, he was completely denied the right to 23 copy documents until the second week of September. (Id.) He asserts that it was only after 24 custody staff forced the library staff to let him copy his documents that he was able to do so. (Id.) 25 b. Denial of Access to Legal Mail by Mailroom Staff 26 Plaintiff states that two of his mailings sent to the Court were held by mailroom staff, one 27 for twelve days, the other for thirty days. Then these mailing were sent back to him “return to 28 sender, undeliverable as addressed,” which he claims were properly addressed to the court. (ECF

1 No. 16 at 15–16.) He further claims that on an unidentified date, a letter he sent to the Office of 2 Policy Standardization was intercepted, opened illegally and sent to Defendant Campbell, the 3 Associate Warden of CSP-Corcoran. (Id. at 16, 17–18.) Thereafter, Plaintiff claims that 4 Defendant Campbell attempted to give him misinformation. (ECF No. 16 at 16.) Plaintiff states 5 he wrote a letter to Defendant Clark to make him aware of the situation, but to Plaintiff’s 6 knowledge he did not respond appropriately. (Id.) 7 C. Discussion 8 Plaintiff’s first amended complaint fails to state any claim upon which relief may be 9 granted. 10 1. Federal Rule of Civil Procedure 8 11 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain 12 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). 13 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause 14 of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 15 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a 16 claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. 17 at 555). While factual allegations are accepted as true, legal conclusions are not. Id.; see also 18 *Twombly*, 550 U.S. at 556–57. 19 Plaintiff’s FAC clearly violates Federal Rules of

Civil Procedure 8(a)(2) and (d)(1). The 20 FAC consists of twenty pages of often meandering and unfocused statements coupled with 21 unnecessary surplusage. In short, the FAC consists neither of “short and plain” statements of 22 Plaintiff’s claims, nor are the allegations in it “simple, concise and direct” as Rule 8 requires. 23 Plaintiff should be aware that repeated failures to provide short and plain statements of claims in 24 a complaint warrant the dismissal of a complaint for failure to state a claim. See *Knapp v. Hogan*, 25 738 F.3d 1106, 1108–09 (9th Cir. 2013). 26 2. Supervisor Liability 27 Plaintiff’s claims against a Defendant, based solely on the mere assertion that he/she holds 28 a position of responsibility in the prison and is therefore responsible for the conduct every staff 1 person working in the prison or under their control, is insufficient in itself to state a claim. 2 Liability may not be imposed on supervisory personnel for the actions or omissions of 3 their subordinates under the theory of respondeat superior. *Iqbal*, 556 U.S. at 676–77; *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir. 2010); *Ewing v. City of Stockton*, 588 5 F.3d 1218, 1235 (9th Cir. 2009); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). 6 Supervisors may be held liable only if they “participated in or directed the violations, or 7 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 8 (9th Cir. 1989); accord *Starr v. Baca*, 652 F.3d 1202, 1205–06 (9th Cir. 2011); *Corales v. 9 Bennett*, 567 F.3d 554, 570 (9th Cir. 2009). “The requisite causal connection may be established 10 when an official sets in motion a ‘series of acts by others which the actor knows or reasonably 11 should know would cause others to inflict’ constitutional harms.” *Corales v. Bennett*, 567 F.3d at 12 570. Supervisory liability may also exist without any personal participation if the official 13 implemented “a policy so deficient that the policy itself is a repudiation of the constitutional 14 rights and is the moving force of the constitutional violation.” *Redman v. Cty. of San Diego*, 942 15 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations marks omitted), abrogated on other 16 grounds by *Farmer v. Brennan*, 511 U.S. 825 (1970). When a defendant holds a supervisory 17 position, the causal link between such defendant and the claimed constitutional violation must be 18 specifically alleged. See *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 19 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement 20 of supervisory personnel in civil rights violations are not sufficient. See *Ivey v. Board of Regents*, 21 673 F.2d 266, 268 (9th Cir. 1982). 22 3. Federal Rules of Civil Procedure 18 and 20 23 Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed. 24 R. Civ. P. 18(a), 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 25 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff may bring a claim against multiple defendants so 26 long as (1) the claim arises out of the same transaction or occurrence, or series of transactions and 27 occurrences, and (2) there are common questions of law or fact. Fed. R. Civ. P. 20(a)(2); 28 *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997). The “same transaction” requirement 1 refers to similarity in the factual background of a claim. *Id.* at 1349. Only if the defendants are 2 properly joined under Rule 20(a) will the Court review the other claims to determine if they may 3 be joined under Rule 18(a), which permits the

joinder of multiple claims against the same party. 4 Plaintiff's FAC attempts to join unrelated claims in violation of Rules 20 and 18. For 5 example, Claim 1 contains subclaims that do not appear related to one another (Covid 6 outbreak/prescription change/incorrect test preparation/denial of dental floss/denial of a pillow), 7 nor to be related to Claims 2 and 3. Nor does Claim 2 (grievance procedure) seem related to

8 Claim 3 (interference with mail).

9 Federal law is clear. Defendants may be joined in one action only when the right to relief 10 against then arises out of the same transaction or occurrence. See Fed. R. Civ. P. 20(a)(2)(A). In 11 addition, common questions of law or fact must be present. See *Coughlin*, 130 F.3d at 1351. In 12 sum, these claims do not appear to be related. 13 III. Failure to Prosecute and Failure to Obey a Court Order 14 A. Legal Standard 15 Local Rule 110 provides that "[f]ailure . . . of a party to comply with these Rules or with 16 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . 17 within the inherent power of the Court." District courts have the inherent power to control their 18 dockets and "[i]n the exercise of that power they may impose sanctions including, where 19 appropriate, . . . dismissal." *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A 20 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, 21 failure to obey a court order, or failure to comply with local rules. See, e.g., *Ghazali v. Moran*, 46 22 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 23 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring 24 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) 25 (dismissal for failure to comply with court order). 26 In determining whether to dismiss an action, the Court must consider several factors: 27 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its 28 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of 1 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779 2 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). 3 B. Discussion 4 Here, Plaintiff's second amended complaint is overdue, and he has failed to comply with 5 the Court's order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his 6 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal. 7 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a 8 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. 9 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against 10 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 11 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose 12 responsibility it is to move a case toward disposition on the merits but whose conduct impedes 13 progress in that direction," which is the case here. In re *Phenylpropanolamine (PPA) Products* 14 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). 15 Finally, the Court's warning to a party that failure to obey the court's order

will result in 16 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262; 17 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s October 10, 2025 order 18 expressly warned Plaintiff that his failure to timely comply with the Court’s order would result in 19 a recommendation of dismissal of this action. (ECF No. 35.) Thus, Plaintiff had adequate 20 warning that dismissal could result from his noncompliance. 21 Additionally, at this stage in the proceedings there is little available to the Court that 22 would constitute a satisfactory lesser sanction while protecting the Court from further 23 unnecessary expenditure of its scarce resources. As Plaintiff is proceeding in forma pauperis in 24 this action, it appears that monetary sanctions will be of little use and the preclusion of evidence 25 or witnesses is likely to have no effect given that Plaintiff has ceased litigating his case. 26 IV. Conclusion and Recommendation 27 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY 28 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim, for 1 failure to obey a court order, and for Plaintiff’s failure to prosecute this action. 2 These Findings and Recommendations will be submitted to the United States District 3 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within 4 fourteen (14) days after being served with these Findings and Recommendations, the parties may 5 file written objections with the court. The document should be captioned “Objections to 6 Magistrate Judge’s Findings and Recommendations.” Objections, if any, shall not exceed 7 fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page 8 number if already in the record before the Court. Any pages filed in excess of the 15-page 9 limit may not be considered. The parties are advised that failure to file objections within the 10 specified time may result in the waiver of the “right to challenge the magistrate’s factual 11 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)). 13 IT IS SO ORDERED. 14 15 Dated: November 20, 2025 /s/ Barbara A. McAuliffe _

UNITED STATES MAGISTRATE JUDGE

16 17 18 19 20 21 22 23 24 25 26 27 28