

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Eugene Jones v. CDCR, et al.

Jones v. CDCR · No. 1:24-cv-01298-KES-BAM · Decided August 13, 2025

OPINION

(PC) Jones v. C.D.C.R.

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 EUGENE JONES, Case No. 1:24-cv-01298-KES-BAM 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 CDCR, et al., TO PROSECUTE 15 Defendants. (ECF No. 33)

16 FOURTEEN (14) DAY DEADLINE

17 18 I. Background 19 Plaintiff Eugene Jones is a state prisoner proceeding pro se and in forma
pauperis in this 20 civil rights action pursuant to 42 U.S.C. § 1983. 21 On May 16, 2025, the
Court screened Plaintiff’s first amended complaint filed May 6, 22 2024, and issued findings and
recommendations that this action be dismissed based on Plaintiff’s 23 failure to state a cognizable
claim upon which relief may be granted. (ECF No. 29.) Those 24 findings and recommendations
were served on Plaintiff and contained notice that any objections 25 thereto were to be filed within
fourteen (14) days after service. (Id.) Following the Court’s order 26 striking Plaintiff’s unsigned
June 4, 2025 filing and granting Plaintiff an extension of time to 27 resubmit his objections,
Plaintiff timely filed signed objections to the findings and 28 recommendations on June 20, 2025.
(ECF Nos. 30-32.) 1 On June 26, 2025, the Court construed Plaintiff’s objections as a motion for
leave to file a 2 second amended complaint. (ECF No. 33.) The Court therefore vacated the
findings and 3 recommendations issued on May 16, 2025 (ECF No. 29), granted Plaintiff leave to
amend, and 4 ordered Plaintiff to file a second amended complaint, limited to Plaintiff’s claim for
excessive 5 force against Defendant John Doe #1 and Plaintiff’s claim for failure to protect against
6 Defendant John Doe #2, within thirty days after service. (ECF No. 33 at 4) (emphasis in 7
original). Plaintiff was expressly warned that if he failed to file a second amended complaint in 8
compliance with the Court’s order, then this action would be dismissed, with prejudice, for failure
9 to obey a court order, failure to prosecute, and failure to state a claim. (Id. at 4.) Plaintiff failed

10 to file a second amended complaint or otherwise communicate with the Court, and the deadline to 11 do so has expired. 12 II. Failure to State a Claim 13 A. Screening Requirement 14 The Court is required to screen complaints brought by prisoners seeking relief against a 15 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. 16 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous 17 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary 18 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b). 19 A complaint must contain "a short and plain statement of the claim showing that the 20 pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 21 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere 22 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 23 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff's allegations are taken as 24 true, courts "are not required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 25 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). 26 To survive screening, Plaintiff's claims must be facially plausible, which requires 27 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable 28 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret 1 Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully 2 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility 3 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969. 4 B. Plaintiff's Allegations 5 Plaintiff is currently housed at California State Prison, Los Angeles County, in Lancaster, 6 California. Plaintiff alleges the events in the operative first amended complaint occurred while he 7 was housed at Wasco State Prison. Plaintiff names as defendants: (1) John Doe #1, correctional 8 officer, (2) Loucue, 1 correctional officer, (3) Boney, correctional nurse, (4) John Doe #2, prison 9 warden. 10 Plaintiff alleges a claim for excessive force in violation of the Eighth Amendment. 11 Plaintiff alleges that on 5/24/24, Plaintiff was housed in an open dorm setting. At about 10:00 12 p.m., several inmates physically attacked Plaintiff. When Defendant John Doe #1 showed up and 13 assisted other officers to break up the attack on Plaintiff, John Doe #1 forcefully grabbed Plaintiff 14 by Plaintiff's right arm and forcefully handcuffed Plaintiff. As Plaintiff was being forcefully 15 handcuffed, he felt something very sharp poke him in his right hand and it went immediately 16 numb, lacking all sensation. He felt a burning throughout his hand and body. 17 Defendant John Doe #1 had intentionally broken the right hand finger of Plaintiff. 18 Plaintiff was taken to an outside hospital, had x-rays and confirmed that Defendant John Doe #1 19 had broken Plaintiff's finger. 20 When Plaintiff returned from the hospital, Defendant John Doe #2 had Plaintiff placed 21 back on the same prison facility yard that the physical attack had occurred upon Plaintiff. John 22 Doe #2 ignored that Plaintiff had been the victim of a rat pack kind of attack and failed to protect 23 Plaintiff. Plaintiff remained on that same prison yard only to be attacked over and over again by 24 other inmates. Plaintiff started

submitting 602 appeals seeking resolution. Plaintiff received no 25 protection from John Doe #2 who failed to redress Plaintiff's safety concerns. 26 On July 17, 2024, Plaintiff had a follow up appointment with the outside hospital. 27 28 1 The spelling of this name is unclear from the allegations. 1 Defendant Loucue was the transporting officer who took Plaintiff to his appointment. As 2 Defendant Loucue was placing the legs/ankle restraints on Plaintiff's ankles, he poked Plaintiff 3 with something of an object on the top of his left foot. Plaintiff immediately felt a tingling 4 throughout the area and body. Plaintiff informed Defendant Loucue that Plaintiff wanted to seek 5 medical treatment immediately. That same day, 7/18/24, Plaintiff was escorted to medical 6 facility. Plaintiff's foot was looked at by Defendant Boney, who is correctional nursing staff. 7 Defendant Boney decided to help Defendant Loucue cover up Plaintiff's injuries by claims she 8 did not see any physical injuries to his foot. He was denied treatment by Defendant Boney. On 9 7/22/24, Plaintiff's foot was in pain and swelling up. Plaintiff immediately reported this to the 10 correctional officer who saw the physical injuries caused by Defendant Loucue that went 11 untreated by Defendant Boney. Defendant John Doe #2 completely ignored Plaintiff's injuries 12 and ignored Plaintiff's verbal complaints to contact him. Instead of escorting Plaintiff directly to 13 medical for treatment, the officers were instructed by Defendant John Doe #2 to escort Plaintiff to 14 a holding lock up cage. 15 Plaintiff was rehoused to a new facility on the next day, Plaintiff became very disturbed 16 by mental anguish and reported feeling suicidal to custody officers for fear of his life. Plaintiff 17 believed that the Defendants were trying to either harm him or kill him. When Plaintiff was 18 discharged from the crisis bed unit, and returned back to Wasco State Prison, Defendant John Doe 19 #2 had Plaintiff placed back on B-facility intentionally to stage violence, fully aware that 20 Plaintiff's life was in danger by others. 21 As remedies, Plaintiff seeks compensatory and punitive damages. 22 C. Discussion 23 Plaintiff's first amended complaint fails to comply with Federal Rules of Civil Procedure 24 8, 18, and 20, and fails to state a cognizable claim for relief. 25 1. Federal Rule of Civil Procedure 8 26 Pursuant to Rule 8, a complaint must contain "a short and plain statement of the claim 27 showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). Detailed factual allegations 28 are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere 1 conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must 2 set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on 3 its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). While factual allegations 4 are accepted as true, legal conclusions are not. *Id.*; see also *Twombly*, 550 U.S. at 556–57; *Moss*, 572 F.3d at 969. 5 Plaintiff's first amended complaint is relatively short, but it is not a plain statement of his 7 claims. While it identifies the specific claims, the allegations are conclusory as to what happened 8 and who was involved. General assertions regarding the failure of defendants to provide him 9 with proper medical care or failing to protect him are not sufficient. Plaintiff's complaint does not 10 contain enough factual content to permit the Court to draw the reasonable inference that any 11 defendant violated Plaintiff's rights. 12 2. Federal Rules of Civil Procedure

18 and 20 13 Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed. 14 R. Civ. P. 18(a), 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *Mackey v. Price*, 15 2020 WL 7319420, at *3–4 (E.D. Cal. Dec. 11, 2020), report and recommendation adopted, 2021 16 WL 843462 (E.D. Cal. Mar. 5, 2021). Plaintiff may bring a claim against multiple defendants so 17 long as (1) the claim arises out of the same transaction or occurrence, or series of transactions and 18 occurrences, and (2) there are commons questions of law or fact. Fed. R. Civ. P. 20(a)(2); 19 *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997). The “same transaction” requirement 20 refers to similarity in the factual background of a claim. *Id.* at 1349. Only if the defendants are 21 properly joined under Rule 20(a) will the Court review the other claims to determine if they may 22 be joined under Rule 18(a), which permits the joinder of multiple claims against the same party. 23 As Plaintiff was previously instructed, Plaintiff may not raise different claims against 24 different defendants in a single action. For instance, Plaintiff may not state unrelated claims, 25 arising on different dates, regarding different failure to protect or excessive force. The different 26 excessive force incidents are not related. Merely because Plaintiff was housed at Wasco State 27 Prison when the incidents occurred does not make every injury or incident related 28 1 3. Supervisory Liability 2 Insofar as Plaintiff is attempting to sue Defendant Warden, or any other defendant, based 3 on his supervisory role, he may not do so. Liability may not be imposed on supervisory personnel 4 for the actions or omissions of their subordinates under the theory of respondeat superior. *Iqbal*, 5 556 U.S. at 676–77; *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011, 1020–21 (9th Cir. 2010); 6 *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones v. Williams*, 297 F.3d 930, 7 934 (9th Cir. 2002). 8 Supervisors may be held liable only if they “participated in or directed the violations, or 9 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th 10 Cir. 1989); accord *Starr v. Baca*, 652 F.3d 1202, 1205–06 (9th Cir. 2011); *Corales v. Bennett*, 11 567 F.3d 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any personal 12 participation if the official implemented “a policy so deficient that the policy itself is a 13 repudiation of the constitutional rights and is the moving force of the constitutional violation.” 14 *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations 15 marks omitted), abrogated on other grounds by *Farmer v. Brennan*, 511 U.S. 825, 114 S.Ct. 1970, 16 128 L.Ed.2d 811 (1970). 17 Here, Plaintiff has failed to establish that Defendant Warden, or other supervisor, 18 participated in or directed any constitutional violation or that he implemented a policy so 19 deficient that it was the moving force of any constitutional violation. Plaintiff’s conclusory 20 allegation that Defendant John Doe #2 (Warden) “had Plaintiff placed” in a particular housing 21 facility is not supported by any factual allegations. In general, prison officials’ housing and 22 classification decisions do not give rise to federal constitutional claims encompassed by the 23 protection of liberty and property guaranteed by the Fifth and Fourteenth Amendments. *Montayne 24 v. Haymes*, 427 U.S. 236, 242 (1976) (It is well settled that prisoners have no constitutional right 25 to placement in any particular prison, to any particular security

classification, or to any particular 26 housing assignment); accord *King v. Lemos*, No. 1:20-CV-01837-NONE-BAM (PC), 2021 WL 27 2038187, at *6 (E.D. Cal. May 21, 2021). 28 1 4. Eighth Amendment 2 a. Excessive Force 3 The Eighth Amendment protects prisoners from inhumane methods of punishment and 4 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 5 2006). The unnecessary and wanton infliction of pain violates the Cruel and Unusual 6 Punishments Clause of the Eighth Amendment. *Hudson v McMillian*, 503 U.S. 1, 5 (1992) 7 (citations omitted). Although prison conditions may be restrictive and harsh, prison officials must 8 provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. 9 *Farmer v. Brennan*, 511 U.S. 825, 832–33 (1994) (quotations omitted). 10 “[W]henever prison officials stand accused of using excessive physical force in violation 11 of the [Eighth Amendment], the core judicial inquiry is...whether force was applied in a good- 12 faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” 13 *Hudson*, 503 U.S. at 6-7. Relevant factors for this consideration include “the extent of injury... [,] 14 the need for application of force, the relationship between that need and the amount of force used, 15 the threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to temper the 16 severity of a forceful response.’ ” *Id.* (quoting *Whitley v. Albers*, 475 U.S. 1078, 1085 (1986)). 17 Finally, because the use of force relates to the prison's legitimate penological interest in 18 maintaining security and order, the court must be deferential to the conduct of prison officials. 19 See *Whitley*, 475 U.S. at 321–22. Not “every malevolent touch by a prison guard gives rise to a 20 federal cause of action.” *Id.* at 9. 21 Plaintiff fails to state a claim for being “forcefully” grabbed and handcuffed. De minimis 22 uses of physical force do not violate the constitution provided that the use of force is not of a sort 23 “repugnant to the conscience of mankind.” *Whitley v. Albers*, 475 U.S. 312, 327 (1986) (quoting 24 *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). While having his finger broken when cuffed 25 indicates force being used, Plaintiff fails to allege facts to support that the harm was maliciously 26 and sadistically inflicted. Plaintiff alleges he was being attacked and officers come in to break up 27 the attack and the force relates to the prison's legitimate penological interest in maintaining 28 security and order. 1 Plaintiff fails to state a cognizable claim against the transporting officer Loucue for 2 injuring his foot. The facts do not indicate that the injury was anything other than an accident 3 while putting on the restraints and does not allege facts from which the Court may infer that the 4 force was maliciously and sadistically applied to cause harm. Moreover, this claim is improperly 5 joined. 6 b. Deliberate Indifference to Medical Care 7 A prisoner's claim of inadequate medical care does not constitute cruel and unusual 8 punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of 9 “deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 10 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). The two-part test for deliberate 11 indifference requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that failure 12 to treat a prisoner's condition could result in further significant injury or the ‘unnecessary and 13 wanton infliction of pain,’ ” and (2) “the defendant's response to

the need was deliberately 14 indifferent.” Jett, 439 F.3d at 1096. A defendant does not act in a deliberately indifferent manner 15 unless the defendant “knows of and disregards an excessive risk to inmate health or safety.” 16 Farmer v. Brennan, 511 U.S. 825, 837 (1994). “Deliberate indifference is a high legal standard,” 17 Simmons v. Navajo County, Ariz, 609 F.3d 1011, 1019 (9th Cir. 2010); Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004), and is shown where there was “a purposeful act or failure to 19 respond to a prisoner’s pain or possible medical need” and the indifference caused harm. Jett, 439 F.3d at 1096. 21 Negligence or medical malpractice do not rise to the level of deliberate indifference. 22 Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 23 105-106). “[A] complaint that a physician has been negligent in diagnosing or treating a medical 24 condition does not state a valid claim of medical mistreatment under the Eighth Amendment. 25 Medical malpractice does not become a constitutional violation merely because the victim is a 26 prisoner.” Estelle, 429 U.S. at 106; see also Anderson v. County of Kern, 45 F.3d 1310, 1316 (9th 27 Cir. 1995). Even gross negligence is insufficient to establish deliberate indifference to serious 28 medical needs. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990). Additionally, a 1 prisoner’s mere disagreement with diagnosis or treatment does not support a claim of deliberate 2 indifference. Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). 3 Further, a “difference of opinion between a physician and the prisoner—or between 4 medical professionals—concerning what medical care is appropriate does not amount to 5 deliberate indifference.” Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (citing Sanchez v. 6 Vild, 891 F.2d at 242, overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 7 1082–83 (9th Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122–23 (9th Cir. 2012)) (citing 8 Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must show that the 9 course of treatment the doctors chose was medically unacceptable under the circumstances and 10 that the defendants chose this course in conscious disregard of an excessive risk to [his] health.” 11 Snow, 681 F.3d at 988 (citing Jackson, 90 F.3d at 332) (internal quotation marks omitted). 12 Plaintiff fails to state a cognizable claim against staff nurse Boney. Plaintiff alleges that 13 Plaintiff’s foot was looked at by Defendant Boney who said she did not see any injury. Plaintiff 14 does not allege any injury was apparent when Defendant Boney looked at his foot, but that the 15 physical manifestations appeared four days later. Plaintiff’s opinion and Defendant Boney’s 16 opinion are merely difference of opinions. Difference of opinion between a physician and the 17 prisoner—or between medical professionals—concerning what medical care is appropriate does 18 not amount to deliberate indifference. 19 c. Failure to Protect 20 A prisoner may state a § 1983 claim under the Eighth Amendment against prison officials 21 only where the officials acted with “deliberate indifference” to the threat of serious harm or injury 22 to an inmate by another prisoner, Berg v. Kincheloe, 794 F.2d 457, 459 (9th Cir. 1986); see also 23 Valandingham v. Bojorquez, 866 F.2d 1135, 1138 (9th Cir. 1989) (deliberately spreading rumor 24 that prisoner is snitch may state claim for violation of right to be protected from violence while in 25 state custody), or by physical

conditions at the prison. The official must both be aware of facts 26 from which the inference could be drawn that a substantial risk of serious harm exists, and he 27 must also draw the inference. See *Farmer*, 511 U.S. at 837, 114 S.Ct. 1970. Mere negligent 28 failure to protect an inmate from harm is not actionable under Section 1983. See *Farmer*, 511 1 U.S. at 835, 114 S.Ct. 1970. 2 It is unclear from the allegations if Plaintiff is claiming that any defendant failed to protect 3 Plaintiff from the attack. Plaintiff fails to state a cognizable claim against any defendant because 4 Plaintiff fails to allege any factual support that any defendant was aware that Plaintiff was at risk 5 of serious harm and failed to take reasonable action. 6 To the extent Plaintiff is challenging being housed in a facility or rehoused in a facility 7 where he was attacked, Plaintiff fails to state a claim. Plaintiff's conclusory allegation that John 8 Doe #2 "had plaintiff housed" in a particular facility fails to allege any facts that John Doe #2 9 knew Plaintiff had been attacked at the facility or would be attacked. Plaintiff fails to allege facts 10 that John Doe #2 knew of Plaintiff's complaints, because merely alleging that Plaintiff made 11 verbal complaints does not allege John Doe #2 received Plaintiff's verbal complaints or reviewed 12 Plaintiff's complaints. 13 As mentioned above, any claim premised on the failure to house Plaintiff at a particular 14 institution or in particular housing fails because Plaintiff is not entitled to be housed in any 15 particular institution or facility. See *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983); *Meachum v. 16 Fano*, 427 U.S. 215, 225 (1976). In general, prison officials' housing and classification decisions 17 do not give rise to federal constitutional claims encompassed by the protection of liberty and 18 property guaranteed by the Fifth and Fourteenth Amendments. *Montayne v. Haymes*, 427 U.S. 19 236, 242 (1976) (It is well settled that prisoners have no constitutional right to placement in any 20 particular prison, to any particular security classification, or to any particular housing 21 assignment); accord *King v. Lemos*, No. 1:20-CV-01837-NONE-BAM (PC), 2021 WL 2038187, 22 at *6 (E.D. Cal. May 21, 2021). 23 5. Doe Defendants 24 Plaintiff names several doe defendants. "As a general rule, the use of 'John Doe' to 25 identify a defendant is not favored." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). 26 John Doe or Jane Doe defendants (i.e., unknown defendants) cannot be served by the United 27 States Marshal until Plaintiff has identified them as actual individuals and amended his complaint 28 to substitute names for John Doe or Jane Doe. 1 III. Failure to Prosecute and Failure to Obey a Court Order 2 A. Legal Standard 3 Local Rule 110 provides that "[f]ailure . . . of a party to comply with these Rules or with 4 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . 5 within the inherent power of the Court." District courts have the inherent power to control their 6 dockets and "[i]n the exercise of that power they may impose sanctions including, where 7 appropriate, . . . dismissal." *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A 8 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, 9 failure to obey a court order, or failure to comply with local rules. See, e.g., *Ghazali v. Moran*, 46 10 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 11 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an

order requiring 12 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) 13 (dismissal for failure to comply with court order). 14 In determining whether to dismiss an action, the Court must consider several factors: 15 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its 16 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of 17 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779 18 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). 19 B. Discussion 20 Here, Plaintiff’s second amended complaint is overdue, and he has failed to comply with 21 the Court’s order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his 22 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal. 23 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a 24 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. 25 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against 26 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 27 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose 28 responsibility it is to move a case toward disposition on the merits but whose conduct impedes 1 progress in that direction,” which is the case here. In *re Phenylpropanolamine (PPA) Products 2 Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). 3 Finally, the Court’s warning to a party that failure to obey the court’s order will result in 4 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262; 5 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s June 26, 2025 order expressly 6 warned Plaintiff that his failure to file a second amended complaint would result in dismissal of 7 this action, with prejudice, for failure to obey a court order, failure to prosecute, and for failure to 8 state a claim. (ECF No. 33 at 4.) Thus, Plaintiff had adequate warning that dismissal could result 9 from his noncompliance. 10 Additionally, at this stage in the proceedings there is little available to the Court that 11 would constitute a satisfactory lesser sanction while protecting the Court from further 12 unnecessary expenditure of its scarce resources. As Plaintiff is proceeding in forma pauperis in 13 this action, it appears that monetary sanctions will be of little use and the preclusion of evidence 14 or witnesses is likely to have no effect given that Plaintiff has ceased litigating his case. 15 IV. Conclusion and Recommendation 16 For the reasons stated, the Court finds that dismissal is the appropriate sanction and 17 HEREBY RECOMMENDS that this action be dismissed, with prejudice, for failure to state a 18 claim pursuant to 28 U.S.C. § 1915A, for failure to obey a court order, and for Plaintiff’s failure 19 to prosecute. 20 These Findings and Recommendation will be submitted to the United States District Judge 21 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen 22 (14) days after being served with these Findings and Recommendation, the parties may file 23 written objections with the Court. The document should be captioned “Objections to Magistrate 24 Judge’s Findings and Recommendation.” Objections, if any, shall not exceed fifteen (15) pages 25 or include exhibits.

Exhibits may be referenced by document and page number if already in the record before the Court. Any pages filed in excess of the 15-page limit may not be considered. The parties are advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 2923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: August 13, 2025 /s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE

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