



1 a factor to be weighed in considering the propriety of finding waiver of an issue on appeal.”  
2 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998).

3 **DISCUSSION**

4 Having reviewed the Report and Recommendation of the Magistrate Judge, and no  
5 Objections having been made by any party thereto, the Court hereby incorporates and adopts  
6 the Magistrate Judge’s Report and Recommendation.

7 **CONCLUSION**

8 For the reasons set forth,

9 **IT IS ORDERED** that the Court **ADOPTS** the Report and Recommendation of the  
10 Magistrate Judge (Doc. #46).

11 **IT IS FURTHER ORDERED GRANTING** Defendant’s Motion to Dismiss (Doc.  
12 #45).

13 **IT IS FURTHER ORDERED** that Plaintiff’s Amended Complaint (Doc. #11) and  
14 this action are **DISMISSED** without prejudice pursuant to Federal Rule of Civil Procedure  
15 41(b) for failure to prosecute.

16 DATED this 17<sup>th</sup> day of March, 2009.

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20 Stephen M. McNamee  
21 United States District Judge  
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