



1 Plaintiff's failure to return the summons and request for waiver forms puts him in  
2 violation of the Court's order filed on June 16, 2008. In that Order, Plaintiff was directed to  
3 return the forms withing 30 days of the filing date of the order, or by July 16, 2008. *Docket*  
4 *No. 7, p. 5.* As indicated above, an entry in the docket reflects that the due date was later  
5 extended until August 1, 2008. No other extensions appear in the record and Plaintiff  
6 indicated that he had received the forms by at least July 21, 2008. Plaintiff has clearly failed  
7 to comply with the Court's order to timely return the summons and waiver forms. In the  
8 same Order directing Plaintiff to return the documents to the Clerk for service by the  
9 Marshals, Plaintiff was provided the following warning:

10 If Plaintiff fails to timely comply with every provision of this  
11 Order . . . the court may dismiss this action without further  
12 notice. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir.  
1992) (a district court may dismiss an action for failure to  
comply with any order of the Court).

13 *Docket No. 7, p. 4.* Based on this warning, and the Plaintiff's failure to return the forms and  
14 to prosecute this action, the Magistrate Judge recommends that this matter be dismissed with  
15 prejudice is appropriate. *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d 708, 714  
16 (9<sup>th</sup> Cir. 2001) (dismissal for failure to prosecute acts as an adjudication on the merits).

17 **Recommendation**

18 Based on the foregoing, the Magistrate Judge **recommends** that the District Court,  
19 after its independent review, issue an Order **dismissing** this matter with prejudice.

20 This Recommendation is not an order that is immediately appealable to the Ninth  
21 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of  
22 Appellate Procedure, should not be filed until entry of the District Court's judgment.

23 However, the parties shall have ten (10) days from the date of service of a copy of this  
24 recommendation within which to file specific written objections with the District Court. See  
25 28 U.S.C. § 636(b)(1) and Rules 72(b), 6(a) and 6(e) of the Federal Rules of Civil Procedure.  
26 Thereafter, the parties have ten (10) days within which to file a response to the objections.  
27 If any objections are filed, this action should be designated case number: **CV 08-399-PHX-**  
28 **NVW.** Failure to timely file objections to any factual or legal determination of the

1 Magistrate Judge may be considered a waiver of a party's right to *de novo* consideration of  
2 the issues. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*).

3 DATED this 9<sup>th</sup> day of October, 2008.

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8 Jacqueline Marshall  
9 United States Magistrate Judge  
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