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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

JAMES EDWARD ROBERTS,

NO. 1:08 cv 00162 LJO GSA PC

Plaintiff,

FINDINGS AND  
RECOMMENDATION THAT THIS  
ACTION BE DISMISSED FOR  
PLAINTIFF'S FAILURE TO  
PROSECUTE

v.

OBJECTIONS DUE IN THIRTY  
DAYS

C/O SALANO,

Defendant.

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. This action was referred to this Court pursuant to 28 U.S.C. §(b)(1)(B) and Local Rule 302.

On December 15, 2011, an order was entered, directing plaintiff to file an opposition to Defendant's motion for summary judgment. Plaintiff was specifically cautioned that his failure to comply would result in dismissal for failure to obey a court order. Plaintiff has not filed an opposition to the motion for summary judgment.

Local Rule 110 provides that "failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court." District courts have the inherent power

1 to control their dockets and “in the exercise of that power, they may impose sanctions including,  
2 where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9<sup>th</sup>  
3 Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute  
4 an action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.  
5 Moran, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir. 1995)(dismissal for noncompliance with local rule); Ferdik v.  
6 Bonzelet, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for failure to comply with an order  
7 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9<sup>th</sup> Cir.  
8 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court  
9 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9<sup>th</sup> Cir. 1987)(dismissal  
10 for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9<sup>th</sup> Cir.  
11 1986)(dismissal for failure to lack of prosecution and failure to comply with local rules).

12 In determining whether to dismiss an action for lack of prosecution, failure to obey a  
13 court order, or failure to comply with local rules, the court must consider several factors: (1) the  
14 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket;  
15 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on  
16 their merits; and (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831;  
17 Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali,  
18 46 F.3d at 53.

19 Here, the Court finds that the public’s interest in expeditiously resolving this litigation  
20 and the court’s interest in managing the docket weigh in favor of dismissal. The third factor, risk  
21 of prejudice to defendants, also weighs in favor of dismissal, since a presumption of injury arises  
22 from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542  
23 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth factor -- public policy favoring disposition of cases on  
24 their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,  
25 a court’s warning to a party that his failure to obey the court’s order will result in dismissal  
26 satisfies the “consideration of alternatives” requirement. Ferdik v. Bonzelet, 963 F.2d at 1262;

1 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424.

2           Accordingly, the court HEREBY RECOMMENDS that this action be dismissed for  
3 plaintiff's failure to obey a court order.

4           These findings and recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b) (1). Within thirty  
6 days after being served with these findings and recommendations, any party may file written  
7 objections with the court and serve a copy on all parties. Such a document should be captioned  
8 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
9 shall be served and filed within ten days after service of the objections. The parties are advised  
10 that failure to file objections within the specified time may waive the right to appeal the District  
11 Court’s order. Martinez v. Y1st, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: January 25, 2012

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE