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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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9 ROBERT GRIFFIN,

10 Plaintiff,

11 vs.

12 KERN MEDICAL CENTER,

13 Defendant.  
14

1:09 CV 01782 AWI YNP SMS (PC)

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

15 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action  
16 pursuant to 42 U.S.C. § 1983.  
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18 On January 14, 2010, Plaintiff was granted a thirty day extension of time in which to  
19 complete and return an application to proceed in forma pauperis. Plaintiff has failed to do so.

20 Local Rule 110 provides that “failure of counsel or of a party to comply with these Local  
21 Rules or with any order of the Court may be grounds for the imposition by the Court of any and  
22 all sanctions . . . within the inherent power of the Court.” District courts have the inherent power  
23 to control their dockets and “in the exercise of that power, they may impose sanctions including,  
24 where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9<sup>th</sup>  
25 Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute  
26 an action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v.

1 Moran, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir. 1995)(dismissal for noncompliance with local rule); Ferdik v.  
2 Bonzelet, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for failure to comply with an order  
3 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9<sup>th</sup> Cir.  
4 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court  
5 apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9<sup>th</sup> Cir. 1987)(dismissal  
6 for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir.  
7 1986)(dismissal for failure to lack of prosecution and failure to comply with local rules).

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

15 In the instant case, the court finds that the public's interest in expeditiously resolving this  
16 litigation and the court's interest in managing the docket weigh in favor of dismissal. The third  
17 factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption of  
18 injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v.  
19 Air West, 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth factor -- public policy favoring  
20 disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal  
21 discussed herein. Finally, a court's warning to a party that his failure to obey the court's order  
22 will result in dismissal satisfies the "consideration of alternatives" requirement. Ferdik v.  
23 Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424.

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

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11 IT IS SO ORDERED.

12 **Dated: April 12, 2010**

**/s/ Sandra M. Snyder**  
**UNITED STATES MAGISTRATE JUDGE**