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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
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10 ANGEL TAMAYO,
11 Plaintiff,

12 vs.

13 R. FISHER, ET AL.,
14 Defendant
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Case No.1:12 cv 00510 LJO GSA PC

FINDINGS AND RECOMMENDATION
THAT THIS ACTION BE DISMISSED FOR
FAILURE TO PROSECUTE AND FAILURE
TO OBEY A COURT ORDER

OBJECTIONS DUE IN TWENTY DAYS

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18 Plaintiff is a former state prisoner proceeding pro se in this civil rights action . The
19 matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and
20 Local Rule 302.

21 On June 2, 2015, an order was entered, directing Plaintiff to complete and submit USM
22 285 forms to the Court for service of process in accordance with the order of May 28, 2015.
23 Plaintiff was granted thirty days in which to return the forms to the Court. Plaintiff has not
24 returned the forms to the Court, or filed a response to the June 2, 2015, order. Plaintiff was
25 cautioned that his failure to timely comply with the order would result in a recommendation of
26 dismissal.

27 Local Rule 110 provides that “failure of counsel or of a party to comply with these Local
28 Rules or with any order of the Court may be grounds for the imposition by the Court of any and

1 all sanctions . . . within the inherent power of the Court.” District courts have the inherent power
2 to control their dockets and “in the exercise of that power, they may impose sanctions including,
3 where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 f.2d 829, 831 (9th
4 Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute
5 an action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v.
6 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)(dismissal for noncompliance with local rule); Ferdik v.
7 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)(dismissal for failure to comply with an order
8 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir.
9 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court
10 apprised of address(; Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)(dismissal
11 for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir.
12 1986)(dismissal for lack of prosecution and failure to comply with local rules).

13 In determining whether to dismiss an action for lack of prosecution, failure to obey a
14 court order, or failure to comply with local rules, the Court must consider several factors: (1) the
15 public’s interest in expeditious resolution of litigation, (2) the court’s need to manage its docket;
16 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
17 their merits; and (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831;
18 Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali,
19 46 F.3d at 53.

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

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

2 Accordingly, IT IS HEREBY RECOMMENDED 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 28 U.S. C. § 636(b)(1)(B). Within twenty
6 days after being served with these findings and recommendations, Plaintiff may file written
7 objections with the Court. Such a document should be captioned "Objections to Magistrate
8 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
9 within the specified time waives all objections to the judge's findings of fact. See Turner v.
10 Duncan, 158 F.3d 449, 455 (9th Cir. 1988). Failure to file objections within the specified time
11 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
12 1991).

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15 IT IS SO ORDERED.

16 Dated: July 7, 2015

17 /s/ Gary S. Austin

18 UNITED STATES MAGISTRATE JUDGE
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