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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MAGEELA DIXON,  
  
                                Plaintiff,  
  
                        v.  
  
STATE OF CALIFORNIA; NATIONAL  
RAILROAD PASSENGER  
CORPORATION; BARBARA ANN NEU;  
BNSF RAILWAY CORPORATION;  
YOUNG’S COMMERCIAL TRANSFER,  
INC.; JIMENEZ TRUCKING;  
RIGOBERTO FERNANDEZ JIMENEZ;  
STATE OF CALIFORNIA  
DEPARTMENT OF  
TRANSPORTATION.  
  
                                Defendants.

No. 1:13-cv-244-AWI-GSA

**FINDINGS AND RECOMMENDATIONS  
REGARDING DISMISSAL OF THIS  
ACTION FOR FAILURE TO OBEY A  
COURT ORDER AND FOR FAILURE TO  
PROSECUTE**

**OBJECTIONS, IF ANY, DUE NO LATER  
THAN JUNE 13, 2014**

**INTRODUCTION**

On December 6, 2013, a status conference was held in this case. At that time, Counsel were ordered to appear for a follow-up status conference on March 26, 2014 at 10:00 before the undersigned. (Doc. 32). The Court also required that a joint status report be filed one week prior to the conference. (Doc. 32).

The status conference was held by this Court on March 26, 2014 as scheduled, however,

1 Plaintiff's counsel failed to appear. Additionally, Plaintiff's counsel did not participate in the  
2 preparation of the joint status report. On March 26, 2014, this Court set another status conference  
3 for May 22, 2014, and ordered that the parties submit a joint scheduling report one week prior to  
4 the hearing. (Doc. 40).

5  
6 On March 26, 2014, this Court also issued an order to show cause why sanctions should  
7 not be imposed against Plaintiff's counsel for failing to appear and failing to follow this Court's  
8 orders. (Doc. 41). Counsel was ordered to file a written response no later than April 17, 2004,  
9 and was advised that failure to file a timely response to the Order to Show Cause could result in  
10 monetary sanctions or dismissal of this action. (Doc. 41). Counsel failed to file any written  
11 response or otherwise contact the Court.

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13 On May 15, 2014, Defendants' counsel filed a statement indicating that Plaintiff's counsel  
14 has failed to respond to discovery requests, and did not participate in the drafting of the joint  
15 scheduling report which is required for the scheduling conference set for May 22, 2014 as  
16 ordered. (Doc. 42).

## 17 18 **DISCUSSION**

19 Local Rule 110 provides that "a failure of counsel or of a party to comply with these Local  
20 Rules or with any order of the Court may be grounds for the imposition by the Court of any and  
21 all sanctions . . . within the inherent power of the Court." District courts have the inherent power  
22 to control their dockets and "in the exercise of that power, they may impose sanctions including,  
23 where appropriate . . . dismissal of a case." Thompson v. Housing Auth., 782 F.2d 829, 831 (9th  
24 Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute  
25 an action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v.  
26 Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v.  
27 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order  
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1 requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
2 (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of  
3 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure  
4 to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)  
5 (dismissal for lack of prosecution and failure to comply with local rules). In determining whether  
6 to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply  
7 with local rules, the court must consider several factors: (1) the public's interest in expeditious  
8 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the  
9 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the  
10 availability of less drastic alternatives. Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-61;  
11 Malone, 833 F.2d at 130; Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24.

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14 In the instant case, the Court finds that the public's interest in expeditiously resolving this  
15 litigation and the Court's interest in managing the docket weigh in favor of dismissal because  
16 there is no indication that the Plaintiff intends to prosecute this action. The third factor, risk of  
17 prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises  
18 from any unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524  
19 (9th Cir. 1976). The fourth factor, public policy favoring disposition of cases on their merits, is  
20 greatly outweighed by the factors in favor of dismissal. Finally, a court's warning to a party that  
21 his failure to obey the court's order will result in dismissal satisfies the "consideration of  
22 alternatives" requirement. Ferdik, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779  
23 F.2d at 1424. The Court's order requiring Plaintiff's counsel to respond to the Order to Show  
24 Cause was clear that dismissal would result from non-compliance with the Court's order. (Doc.  
25 41, pg. 2).

## 26 27 28 **RECOMMENDATION**

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Based on the above, IT IS HEREBY RECOMMENDED that this action be DISMISSED for Plaintiff's failure to comply with a court order and that the Clerk of the Court be directed to close this action. In light of this recommendation, the scheduling conference in this matter currently set for May 22, 2014 at 10:00 a.m. is VACATED.

These findings and recommendations are submitted to United States District Judge Anthony W. Ishii, pursuant to 28 U.S.C. § 636(b)(1)(B). Within **thirty (30) days** after the date of this Finding and Recommendation, the parties may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Finding and Recommendation." The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: May 19, 2014

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE