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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA
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7 DEMETRIUS FREEMAN,

8 Plaintiff,

9 vs.

10 C/ A. MARTIN, et al.,

11 Defendants

Case No. 1:14 cv 00575 LJO GSA PC

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

12 OBJECTIONS DUE IN THIRTY DAYS

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14 Plaintiff is a federal prisoner proceeding pro se and in forma pauperis in this civil rights
15 action pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). Plaintiff has
16 consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).

17 On June 11, 2014, an order was sent to Plaintiff along with a form to consent or decline
18 to proceed before a magistrate judge. Plaintiff was directed to complete and return the form to
19 the Court within thirty days. Plaintiff has not complied with the Court's order.

20 Local Rule 110 provides that "failure of counsel or of a party to comply with these Local
21 Rules or with any other order of the Court may be grounds for the imposition by the Court of any
22 and all sanctions . . . within the inherent power of the Court." District Courts have the inherent
23 power to control their dockets and "in the exercise of that power, they may impose sanction
24 including, where appropriate . . . dismissal of a case." Thompson v. Housing Auth., 782 F.2d
25 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's
26 failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.
27 See, e.g. Ghazali v. Moran, 46 F.3d 52, 54-54 (9th Cir. 1995)(dismissal for noncompliance with
28 local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)(dismissal for failure to

1 comply with an order requiring amendment of complaint); Carey v. Kingt, 856 F.2d 1439, 1440-
2 41 (9th Cir. 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to
3 keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir.
4 1987)(dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,
5 1424 (9th Cir. 1986)(dismissal for lack of prosecution and failure to comply with local rules).

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

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

22 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for failure
23 to prosecute and to obey a court order.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S. C. § 636(b)(1)(B). Within thirty days
26 after being served with these findings and recommendations, plaintiff may file written objections
27 with the Court. Such a document should be captioned “Objections to Magistrate Judge's

1 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
2 specified time waives all objections to the judge’s findings of fact. See Turner v. Duncan, 158
3 F.3d 449, 455 (9th Cir. 1988). Failure to file objections within the specified time may waive the
4 right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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6 IT IS SO ORDERED.

7 Dated: September 29, 2014

8 /s/ Gary S. Austin

9 UNITED STATES MAGISTRATE JUDGE
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