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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 MARVIN JENKINS,

12 Plaintiff,

13 v.

14 CALIFORNIA DEPARTMENT OF  
15 CORRECTIONS AND  
16 REHABILITATION,

17 Defendant.  
18  
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CASE NO. 1:14-cv-01795-LJO-MJS (PC)

**FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION WITHOUT PREJUDICE  
FOR FAILURE TO OBEY A COURT  
ORDER, FAILURE TO PROSECUTE,  
FAILURE TO FILE APPLICATION TO  
PROCEED IN FORMA PAUPERIS, AND  
FAILURE TO PAY FILING FEE**

**(ECF Nos. 1 & 4)**

**FOURTEEN (14) DAY OBJECTION  
DEADLINE**

20 Plaintiff is a state prisoner proceeding pro se in a civil rights action brought  
21 pursuant to 42 U.S.C. § 1983. He initially was a plaintiff in Webb v. California  
22 Department of Corrections and Rehabilitation, No. 1:14-cv-01528-MJS (PC). On  
23 November 17, 2014, the Court severed Plaintiff's claims and ordered the Clerk's Office  
24 to open the instant action for those claims. Plaintiff was ordered to submit his own  
25 complaint within thirty days, and an application to proceed in forma pauperis or the  
26 applicable filing fee within forty-five days. (ECF No. 1.) These deadlines passed without  
27 Plaintiff filing his pleading or an application to proceed in forma pauperis, paying the  
28 applicable filing fee, or seeking an extension of time to do so.

1 On January 13, 2015, the Court ordered Plaintiff to show cause, within fourteen  
2 days, why the action should not be dismissed for failure to obey a court order and failure  
3 to prosecute. (ECF No. 4.) Plaintiff did not respond to the order to show cause, and the  
4 time for doing so has passed.

5 Local Rule 110 provides that “failure of counsel or of a party to comply with these  
6 Rules or with any order of the Court may be grounds for imposition by the Court of any  
7 and all sanctions . . . within the inherent power of the Court.” District courts have the  
8 inherent power to control their dockets and “in the exercise of that power, they may  
9 impose sanctions including, where appropriate . . . dismissal of a case.” Thompson v.  
10 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based  
11 on a party’s failure to prosecute, failure to obey a court order, or failure to comply with  
12 local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for  
13 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.  
14 1992) (dismissal for failure to comply with an order requiring amendment of a complaint);  
15 Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply  
16 with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.  
17 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply  
18 with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986)  
19 (dismissal for lack of prosecution and failure to comply with local rules).

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

27 In the instant case, the public’s interest in expeditiously resolving this litigation  
28 and the Court’s interest in managing its docket weigh in favor of dismissal. The third

1 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a  
2 presumption of injury arises from the occurrence of unreasonable delay in prosecuting  
3 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –  
4 public policy favoring disposition of cases on their merits – is greatly outweighed by the  
5 factors in favor of dismissal discussed herein. Finally, as for the availability of lesser  
6 sanctions, at this stage in the proceedings there is little available which would constitute  
7 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not  
8 paid the filing fee for this action and is likely unable to pay, making monetary sanctions  
9 of little use.

10 Plaintiff has failed to comply with the Court's order that he file his own pleading,  
11 and file an application to proceed in forma pauperis or pay the applicable filing fee. (ECF  
12 No. 1.) Accordingly, it is HEREBY RECOMMENDED THAT this action be DISMISSED  
13 without prejudice.

14 These findings and recommendation are submitted to the United States District  
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
16 fourteen (14) days after being served with these Findings and Recommendations, any  
17 party may file written objections with the Court and serve a copy on all parties. Such a  
18 document should be captioned "Objections to Magistrate Judge's Findings and  
19 Recommendations." Any reply to the objections shall be served and filed within fourteen  
20 (14) days after service of the objections. The parties are advised that failure to file  
21 objections within the specified time may result in the waiver of rights on appeal.  
22 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (9th Cir. 2014) (citing Baxter v.  
23 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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25 IT IS SO ORDERED.

26 Dated: February 3, 2015

27 /s/ Michael J. Seng  
28 UNITED STATES MAGISTRATE JUDGE

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