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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF CALIFORNIA  
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10 ADRIAN BOWMAN,

11 Plaintiff,

12 vs.

13 J. LOPEZ,

14 Defendant  
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Case No.1:14 cv 01840 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 state prisoner proceeding pro se in this civil rights action . The matter was  
19 referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local  
20 Rule 302.

21 On November 24, 2014, an order was entered, severing this action and directing  
22 Plaintiff to file an amended complaint. Plaintiff was specifically cautioned that his failure to  
23 comply would result in dismissal for failure to obey a court order. Plaintiff has not filed a  
24 response to the November 24, 2014, order.<sup>1</sup>

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26 <sup>1</sup> On November 24, 2014, the Court served the order on Plaintiff at Kern Valley State Prison  
27 Corcoran, where Plaintiff was formerly incarcerated. (ECF No. 2). On December 8, 2014, the order was returned  
28 by the U.S. Postal Service as undeliverable. Local Rule 183(b) requires Plaintiff to keep the Court informed of his  
address.

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

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

22 Here, the Court finds that the public’s interest in expeditiously resolving this litigation  
23 and the Court’s interest in managing the docket weigh in favor of dismissal. The third factor,  
24 risk of prejudice to Defendants, also weighs in favor of dismissal, since a presumption of injury  
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1 arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West,  
2 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth factor – public policy favoring disposition of cases  
3 on the merits – is greatly outweighed by the factors in favor of dismissal discussed herein.  
4 Finally, a court’s warning to a party that his failure to obey the court’s order will result in  
5 dismissal satisfies the “consideration of alternatives” requirement. Ferdik, 963 F.2d at 1262;  
6 Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424.

7 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for  
8 Plaintiff’s failure to obey a court order.

9 These findings and recommendations are submitted to the United States District Judge  
10 assigned to the case, pursuant to the provisions of 28 U.S. C. § 636(b)(1)(B). Within twenty  
11 days after being served with these findings and recommendations, plaintiff may file written  
12 objections with the Court. Such a document should be captioned “Objections to Magistrate  
13 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections  
14 within the specified time waives all objections to the judge’s findings of fact. See Turner v.  
15 Duncan, 158 F.3d 449, 455 (9<sup>th</sup> Cir. 1988). Failure to file objections within the specified time  
16 may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir.  
17 1991).

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19 IT IS SO ORDERED.

20 Dated: January 16, 2015

21 /s/ Gary S. Austin

22 UNITED STATES MAGISTRATE JUDGE  
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