

1 an attorney, she must notify the Court regarding when that would occur. (*Id.*)

2 Plaintiff failed to respond to the Court's order. As a result, the Court issued an order to show
3 cause why the action should not be dismissed for the failure to respond to the Court's order, or in the
4 alternative, "to file a notification indicating whether she intends to represent herself." (Doc. 77 at 2)
5 To date, Plaintiff has not responded to either order of the Court, or taken any further action to prosecute
6 the matter.

7 **II. Failure to Prosecute and Obey the Court's Orders**

8 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: "Failure of counsel or of a
9 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any
10 and all sanctions . . . within the inherent power of the Court." LR 110. "District courts have inherent
11 power to control their dockets," and in exercising that power, a court may impose sanctions including
12 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.
13 1986). A court may dismiss an action with prejudice, based on a party's failure to prosecute an action
14 or failure to obey a court order, or failure to comply with local rules. *See, e.g. Ferdik v. Bonzelet*, 963
15 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment
16 of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
17 comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
18 failure to prosecute and to comply with local rules).

19 **III. Discussion and Analysis**

20 To determine whether to dismiss an action for failure to prosecute and failure to obey a Court
21 order, the Court must consider several factors, including: "(1) the public's interest in expeditious
22 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
23 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability
24 of less drastic sanctions." *Henderson*, 779 F.2d at 1423-24; *see also Ferdik*, 963 F.2d at 1260-61;
25 *Thomson*, 782 F.2d at 831.

26 In the case at hand, the public's interest in expeditiously resolving this litigation and the Court's
27 interest in managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d
28 983, 990 (9th Cir. 1999) ("The public's interest in expeditious resolution of litigation always favors

1 dismissal”); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in
2 managing their dockets without being subject to noncompliant litigants). Judges in the Eastern District
3 of California carry the heaviest caseload in the nation, and this Court cannot, and will not hold, this
4 action in abeyance given Plaintiff’s failure to comply with the Court’s orders and failure to prosecute.
5 The risk of prejudice to the defendants also weighs in favor of dismissal, since a presumption of injury
6 arises from the occurrence of unreasonable delay in prosecution of an action. *See Anderson v. Air West*,
7 542 F.2d 522, 524 (9th Cir. 1976).

8 Significantly, the Ninth Circuit determined a court’s warning to a party that failure to obey the
9 court’s order will result in dismissal satisfies the requirement that less drastic sanctions be considered.
10 *Malone*, 833 F.2d at 131; *see also Ferdik*, 963 F.2d at 1262. As the Ninth Circuit explained, “a
11 plaintiff can hardly be surprised” by a sanction of dismissal “in response to willful violation of a
12 [court] order.” *Malone*, 833 F.2d at 133. Here, Plaintiff was warned that “**her failure to comply with**
13 **this or any order of the Court may result in the action being dismissed.**” (Doc. 76 at 3, emphasis
14 in original). Again, in the order to show cause Plaintiff was advised that failure to comply with the
15 Court’s orders would result in dismissal of action. (Doc. 77 at 1-2) Thus, Plaintiffs received adequate
16 warning that dismissal would result from her noncompliance with the Court’s orders, which satisfies
17 the Court’s obligation to consider lesser sanctions. *See Malone*, 833 F.2d at 131. Given these facts,
18 the policy favoring disposition of cases on their merits is outweighed by the factors in favor of
19 dismissal.

20 **IV. Findings and Recommendations**

21 Plaintiff failed to comply with, or otherwise respond to, the Court’s orders dated May 20, 2016
22 (Doc. 76) and June 8, 2016 (Doc. 77). Consequently, Plaintiff also failed to continue the prosecution of
23 this action. Based upon the foregoing, the Court **RECOMMENDS**:

- 24 1. This action be **DISMISSED with prejudice**; and
- 25 2. The Clerk of Court be **DIRECTED** to close the action.

26 These Findings and Recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
28 Rules of Practice for the United States District Court, Eastern District of California. Within 14 days

1 after being served with these Findings and Recommendations, any party may file written objections
2 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
3 Recommendations.” The parties are advised that failure to file objections within the specified time may
4 waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991);
5 *Wilkerson v. Wheeler*, 772 F.3d 834, 834 (9th Cir. 2014).

6
7 IT IS SO ORDERED.

8 Dated: June 28, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE