

1 amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for
2 failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
3 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
4 with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure
5 to lack of prosecution and failure to comply with local rules). In determining whether to dismiss an
6 action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the
7 court must consider several factors: (1) the public's interest in expeditious resolution of litigation;
8 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
9 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
10 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
11 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

12 In the instant case, the court finds that the public's interest in expeditiously resolving
13 this litigation and the court's interest in managing the docket weigh in favor of dismissal, as this case
14 has been pending since October 17, 2008. The third factor, risk of prejudice to defendants, also
15 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
16 unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
17 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly
18 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a
19 party that her failure to obey the court's order will result in dismissal satisfies the "consideration of
20 alternatives" requirement. *Ferdik v. Bonzelet*, 963 F.2d at 1262; *Malone*, 833 at 132-33; *Henderson*,
21 779 F.2d at 1424. The court's order requiring plaintiff to pay the \$350.00 filing fee and/or submit an
22 application to proceed in forma pauperis expressly stated: "Failure to comply with this order will
23 result in a recommendation that this action be dismissed." Thus, plaintiff had adequate warning that
24 dismissal would result from her noncompliance with the court's order.

25 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed
26 based on plaintiff's failure to obey the court's order of December 4, 2008.

27 These Findings and Recommendations are submitted to the United States District
28 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty

1 (20) days after being served with these Findings and Recommendations, plaintiff may file written
2 objections with the court. Such a document should be captioned "Objections to Magistrate Judge's
3 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
4 specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d
5 1153 (9th Cir. 1991).

6
7 IT IS SO ORDERED.

8 **Dated: February 12, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE