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8		UNITED STATES DISTRICT COURT	
9	FOR THE EAST	ERN DISTRICT OF CALIFORNIA	
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11	LINDA BURNS,) 1:09-cv-1362 AWI GSA	
12	Plaintiff,)) FINDINGS AND RECOMMENDATION	
13	VS.) TO DISMISS CASE FOR FAILURE TO) OBEY A COURT ORDER	
14	JEFFREY R. LEVIN, MD.,)	
15) OBJECTIONS, IF ANY, DUE IN THIRTY) DAYS	
16	Defendant.)	
17)	

On August 31, 2009, the court issued an order dismissing Plaintiff's complaint with leave
to amend. The order directed that Plaintiff file an amended complaint within thirty (30) days.
(Doc. 6). On October 1, 2009, instead of filing an amended complaint, Plaintiff filed a Motion
to Change Venue. (Doc. 8). On October 13, 2009, the Court denied Plaintiff's motion and
granted Plaintiff an additional twenty (20) days to file an amended Complaint. (Doc. 9). The
twenty day (20) period has now expired, and plaintiff has not filed an amended complaint or
otherwise responded to the court's order.

Local Rule 11-110 provides that "failure of counsel or of a party to comply with these

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

In determining whether to dismiss an action for lack of prosecution, failure to obey a 15 court order, or failure to comply with local rules, the court must consider several factors: (1) the 16 public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; 17 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on 18 their merits; and (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831; 19 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 In the instant case, the court finds that the public's interest in expeditiously resolving this 23 litigation and the court's interest in managing the docket weigh in favor of dismissal. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v.

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Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring 1 2 disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the court's order 3 will result in dismissal satisfies the "consideration of alternatives" requirement. Ferdik v. 4 5 Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The court's order expressly stated: "Failure to file an amended complaint will result in dismissal of this 6 7 action without prejudice." (Doc. 9). Thus, plaintiff had adequate warning that dismissal would result from her noncompliance with the court's order. 8

Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based on
plaintiff's failure to obey the court's order of October 13, 2009.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within thirty days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. <u>Martinez v. Ylst</u>, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

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Dated: November 9, 2009

/s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE