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6 **IN THE UNITED STATES DISTRICT COURT FOR THE**
7 **EASTERN DISTRICT OF CALIFORNIA**
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9 JOSEPHINE FLORES,

1:10-cv-00394-AWI-BAM

10 Plaintiff,

**ORDER REQUIRING PLAINTIFF
TO SHOW CAUSE WHY THE
ACTION SHOULD NOT BE
DISMISSED**

11 v.

12 CITY OF TULARE et al.,

13 Defendants.
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15 _____/

16 **I. BACKGROUND**

17 The Court refers the parties to previous orders for a complete chronology of the
18 proceedings.

19 On June 5, 2013, plaintiff Josephine Flores (“Plaintiff”) filed a notice of settlement. By
20 order dated June 7, 2013, the Magistrate Judge entered an order instructing the parties to file
21 appropriate papers to dismiss or conclude this action in its entirety no later than June 28, 2013.
22 See Local Rule 160.

23 On June 27, 2013, Plaintiff filed a status report requesting additional time to finalize the
24 settlement and to submit documents to the Court for case closure. By minute order dated July 1,
25 2013, the Court granted the parties an additional sixty days to finalize the settlement.
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1 On September 5, 2013, the parties filed a joint stipulation requesting additional time to
2 consummate the settlement. By order dated September 5, 2013, the Court extended the time to
3 consummate the settlement to October 15, 2013.

4 On November 1, 2013, the parties filed a joint stipulation for order further extending the
5 time to consummate the settlement. By order dated November 1, 2013, pursuant to the parties'
6 stipulation, the Court granted a final extension to consummate the settlement. See Doc. 62. The
7 Court made clear that the extension was limited to thirty days from the issuance of that order.
8 Within that time the parties were ordered to reach a settlement and file the appropriate papers to
9 dismiss or conclude the action. The Court further explained that “[i]f the parties fail[ed] to
10 comply with [the] order, the Court [would] ... issue an order to show cause why the parties
11 should not be jointly sanctioned for failure to consummate the settlement agreement.”¹ Doc. 62.

12 The order was docketed on November 4, 2013. Even giving the parties thirty (30) days
13 from that date, the parties were required to file the appropriate papers by December 4, 2013. The
14 parties failed to do so.

15 II. DISCUSSION

16 The Plaintiff has: (1) failed to prosecute this action as required by Federal Rule of Civil
17 Procedure 41(b), (2) failed to comply with this Court’s order dated November 1, 2013, and (3)
18 failed to file dispositional documents as required under Local Rule 160(b).

19 The Defendants have failed to comply with this Court’s order dated November 1, 2013.

20 Federal Rule of Civil Procedure 41(b), in relevant part, provides, “If a plaintiff fails to
21 prosecute or to comply with these rules or a court order, a defendant may move to dismiss the
22 action or any claim against it.” Fed. R. Civ. Pro. 41(b). Although the language indicates that
23 Rule 41(b) is applicable upon motion by the defendant, “courts may dismiss under Rule 41(b)
24 *sua sponte*, at least in some circumstances.” Hells Canyon Preservation Council v. United States

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26 ¹ The Court also indicated that a failure to consummate the settlement would result in the court vacating “the notice
27 of settlement, restor[ing] the case to its active trial docket, and refer[ring] the case to the Magistrate Judge for a trial-
28 setting conference.” Doc. 62. Upon further consideration, this court has decided that the more appropriate sanction
for Plaintiff’s failure to prosecute, failure to file dispositional documents, as required by Local Rule 160(b), and the
parties failure to comply with this Court’s order, is dismissal of the action.

1 Forest Service, 403 F.3d 683, 689 (9th Cir. 2005) (citing Olsen v. Maples, 333 F.3d 1199, 1204
2 n.3 (10th Cir. 2003)).

3 Local Rule 110, corresponding with Fed.R.Civ.P. 11, provides that “a failure of counsel
4 or of a party to comply with these Local Rules or with any order of the Court may be grounds for
5 the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.”
6 Local Rule 160(b), in relevant part, provides, “A failure to file dispositional papers on the date
7 prescribed by the Court may be grounds for sanctions.” “District courts have the inherent power
8 to control their dockets and in the exercise of that power they may impose sanctions including,
9 where appropriate, dismissal of a case.” Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th
10 Cir. 2000); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992); Thompson v. Housing
11 Authority of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986).

12 A court may dismiss an action with prejudice based on a party's failure to prosecute an
13 action or failure to obey a court order. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir.
14 1995)(dismissal for noncompliance with Local Rule); In re Eisen, 31 F.3d 1447, 1456 (9th Cir.
15 1994) (dismissal for lack of prosecution); Ferdik, 963 F.2d at 1260-61 (dismissal for failure to
16 comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal
17 for lack of prosecution and failure to comply with Local Rules). In determining whether to
18 dismiss an action for lack of prosecution or failure to obey a court order the court must consider
19 several factors, including: (1) the public's interest in expeditious resolution of litigation; (2) the
20 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
21 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
22 alternatives. Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002); Bautista, 216 F.3d at
23 841; In re Eisen, 31 F.3d at 1451; Ferdik, 963 F.2d at 1260-61; Henderson, 779 F.2d at 1424;
24 Thompson, 782 F.2d at 831.

25 In the case at hand, the public's interest is in resolving this litigation. See Yourish v.
26 California Amplifier, 191 F.3d 983, 990 (9th Cir.1999) (“The public's interest in expeditious
27 resolution of litigation always favors dismissal”). Similarly, the Court's has an interest in
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1 managing its docket, given that the Eastern District of California is one of the busiest federal
2 jurisdictions in the United States and its District Judges carry some of the heaviest caseloads in
3 the nation. Because Plaintiff has shown no interest in prosecuting her claims, failed to file
4 dispositional documents, and failed to comply with the Courts orders, the Court's interest in
5 managing its docket weighs in favor of dismissal. See Ferdik, 963 F.2d at 1261 (recognizing that
6 district courts have inherent interest in managing their dockets without being subject to
7 noncompliant litigants). In addition, the risk of prejudice to the defendants weighs in favor of
8 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in
9 prosecution of an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.1976).

10 This Court has three times previously extended time for filing of the dispositional
11 documents. The parties have failed to do so. Further, the Court warned the parties that no further
12 extension would be granted and their failure to consummate the settlement agreement could
13 result in sanctions. See Doc. 62. The Court's warning satisfies the requirement that the Court
14 consider less drastic measures. Ferdik, 963 F.2d at 1262; Henderson, 779 F.2d 1421, 1424 (9th
15 Cir. 1986).

16 III. ORDER

17 Accordingly, Plaintiff is hereby ORDERED to SHOW CAUSE in writing by December
18 19, 2013 by 10:00 a.m., why this action should not be dismissed due to the parties' failure to
19 comply with this Court's order dated November 1, 2013, Plaintiff's failure to prosecute, and
20 Plaintiff's failure to comply with Local Rules.

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22 IT IS SO ORDERED.

23 Dated: December 13, 2013


24 SENIOR DISTRICT JUDGE