



1 control their dockets and in the exercise of that power, they may impose sanctions including, where  
2 appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986).  
3 A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure  
4 to obey a court order, or failure to comply with local rules. See Ghazali v. Moran, 46 F.3d 52, 53-54  
5 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258,  
6 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of  
7 complaint); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to  
8 comply with court order).

9 In determining whether to dismiss an action for lack of prosecution, the Court must consider  
10 several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to  
11 manage its docket; (3) the risk of prejudice to the Respondents; (4) the public policy favoring  
12 disposition of cases on their merits; and, (5) the availability of less drastic alternatives. Henderson v.  
13 Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988). The  
14 Court finds that the public’s interest in expeditiously resolving this litigation and the court’s interest in  
15 managing the docket weigh in favor of dismissal, as this case has been pending since January 3, 2013.  
16 The Court cannot hold this case in abeyance indefinitely awaiting compliance by Petitioner. The third  
17 factor, risk of prejudice to Respondents, also weighs in favor of dismissal, since a presumption of  
18 injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air  
19 West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of  
20 cases on their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein.  
21 Finally, given Petitioner’s noncompliance with the Court’s order, no lesser sanction is feasible. The  
22 Court will not, and cannot, hold the case in abeyance based upon Plaintiff’s failure to prosecute or  
23 notify the Court of a change in address.

## 24 II.

### 25 RECOMMENDATION

26 Based on the foregoing, Plaintiff has failed to prosecute this action and failed to comply with  
27 the Local Rules. As set forth above, the factors set forth by the Ninth Circuit weigh in favor of  
28

1 dismissal of the matter. No lesser sanction is feasible given Plaintiff's inability to comply with the  
2 Court's orders.

3 Accordingly, IT IS HEREBY RECOMMENDED:

- 4 1. This action be DISMISSED, with prejudice, for failure to prosecute;
- 5 2. Defendants' motion to dismiss be DENIED as MOOT; and
- 6 3. The Clerk of Court be DIRECTED to close this action.

7 These Findings and Recommendations will be submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**  
9 **days** after being served with these Findings and Recommendation, the parties may file written  
10 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
11 Findings and Recommendation." The parties are advised that failure to file objections within the  
12 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
13 1153 (9th Cir. 1991).

14  
15  
16 IT IS SO ORDERED.

17 Dated: November 3, 2014

  
UNITED STATES MAGISTRATE JUDGE