



1 On November 7, 2018, the Court's October 31, 2018, was returned by the United States Postal  
2 Office with a notation that it could not be delivered as addressed.

3 On November 8, 2018, Plaintiff filed a notice of change of address. (ECF No. 129.)\_ On this  
4 same date, the Court re-served the October 31, 2018, order at Plaintiff's new address of record. On  
5 November 9, 2018, Plaintiff filed another change of address, but the address remained the same and  
6 re-service was not necessary. (ECF No. 130.)

7 The twenty-one deadline passed without Plaintiff either filing and opposition or statement of  
8 non-opposition.

## 9 II.

### 10 LEGAL STANDARD

11 Local Rule 110 provides that "[f]ailure . . . of a party to comply with these Rules or with any  
12 order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the  
13 inherent power of the Court." District courts have the inherent power to control their dockets and "[i]n  
14 the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal."  
15 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with  
16 prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to  
17 comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for  
18 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal  
19 for failure to comply with an order requiring amendment of complaint); Malone v. U.S. Postal Service,  
20 833 F.2d 128, 130-33 (9th Cir. 1987) (dismissal for failure to comply with court order).

21 In determining whether to dismiss an action for lack of prosecution, the Court must consider  
22 several factors: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to  
23 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition  
24 of cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779  
25 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

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**III.**

**ANALYSIS**

In the instant case, the public’s interest in expeditiously resolving this litigation and the Court’s interest in managing its docket weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weights in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting this action. *Anderson v. Air West*, 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth factor—public policy favoring disposition of cases on their merits—is greatly outweighed by the factors in favor of dismissal discussed herein. Finally, as for the availability of lesser sanctions, at this stage in the proceedings there is little available which would constitute a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not paid the filing fee for this action is likely unable to pay, making monetary sanctions of little use.

**IV.**

**RECOMMENDATION**

Based on the foregoing, it is HEREBY RECOMMENDED that the action be dismissed based on Plaintiff’s failure to obey a court order and failure to prosecute.

This Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with this Findings and Recommendation, the parties may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: November 27, 2018



UNITED STATES MAGISTRATE JUDGE