



1 ordered Plaintiff to show cause why the action should not be dismissed, or in the alternative to file an  
2 amended complaint. (*Id.*) To date, Plaintiff has failed to comply with or otherwise respond to the  
3 Court's order.

## 4 **II. Failure to Prosecute and Obey the Court's Orders**

5 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: "Failure of counsel or of a  
6 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any  
7 and all sanctions . . . within the inherent power of the Court." LR 110. "District courts have inherent  
8 power to control their dockets," and in exercising that power, a court may impose sanctions including  
9 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.  
10 1986). A court may dismiss an action with prejudice, based on a party's failure to prosecute an action  
11 or failure to obey a court order, or failure to comply with local rules. *See, e.g. Ferdik v. Bonzelet*, 963  
12 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment  
13 of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to  
14 comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for  
15 failure to prosecute and to comply with local rules).

## 16 **III. Discussion and Analysis**

17 To determine whether to dismiss an action for failure to prosecute and failure to obey a Court  
18 order, the Court must consider several factors, including: "(1) the public's interest in expeditious  
19 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the  
20 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability  
21 of less drastic sanctions." *Henderson*, 779 F.2d at 1423-24; *see also Ferdik*, 963 F.2d at 1260-61;  
22 *Thomson*, 782 F.2d at 831.

23 In the case at hand, the public's interest in expeditiously resolving this litigation and the Court's  
24 interest in managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d  
25 983, 990 (9th Cir. 1999) ("The public's interest in expeditious resolution of litigation always favors  
26 dismissal"); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in  
27 managing their dockets without being subject to noncompliant litigants). Judges in the Eastern District  
28 of California carry the heaviest caseload in the nation, and this Court cannot, and will not hold, this

1 action in abeyance given Plaintiff's failure to comply with the deadlines set forth by the Court and  
2 failure to prosecute. The risk of prejudice to the defendant also weighs in favor of dismissal, since a  
3 presumption of injury arises from the occurrence of unreasonable delay in prosecution of an action. *See*  
4 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

5 Notably, Plaintiff was warned that if he failed to file an amended complaint, "the action will be  
6 dismissed for failure to obey a court order." (Doc. 3 at 8, emphasis in original). In addition, in the  
7 Order to Show Cause, the Court reminded Plaintiff that an action may be dismissed "based on a  
8 party's failure to prosecute an action or failure to obey a court order." (Doc. 4 at 1.) Plaintiff had  
9 adequate warning that dismissal would result from his noncompliance with the Court's orders, and his  
10 failure to prosecute the action. Further, these warnings satisfy the requirement that the Court consider  
11 less drastic measures. *Ferdik*, 963 F.2d at 1262; *Henderson*, 779 F.2d at 1424. Given these facts, the  
12 policy favoring disposition of cases on their merits is outweighed by the factors in favor of dismissal.

#### 13 **IV. Order**

14 Plaintiff failed to comply with, or otherwise respond to, the Court's orders dated June 10, 2014  
15 (Doc. 3) and July 9, 2014 (Doc. 4). Consequently, Plaintiff has also failed to prosecute this action  
16 through his failure to file a First Amended Complaint.

17 Good cause appearing, **IT IS HEREBY ORDERED**: The Clerk of Court is DIRECTED to  
18 assign a United States District Judge to this action.

#### 19 **V. Findings and Recommendations**

20 Based upon the foregoing, **IT IS HEREBY RECOMMENDED**:

- 21 1. This action be **DISMISSED without prejudice**; and
- 22 2. The Clerk of Court be DIRECTED to close the action.

23 These Findings and Recommendations are submitted to the United States District Judge  
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local  
25 Rules of Practice for the United States District Court, Eastern District of California. Within 14 days  
26 after being served with these Findings and Recommendations, Plaintiff may file written objections  
27 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and  
28 Recommendations."

1 Plaintiff is advised that failure to file objections within the specified time may waive the right  
2 to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: July 30, 2014

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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