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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESTHER S. LONG, et al.)	Case No.: 1:14-cv-01737 - DAD - JLT
Plaintiffs,)	
v.)	FINDINGS AND RECOMMENDATIONS
HOME DEPOT, USA, INC., et al.,)	DISMISSING THE ACTION FOR PLAINTIFFS’
Defendants.)	FAILURE TO COMPLY WITH THE COURT’S
)	ORDERS AND FAILURE TO PROSECUTE

Plaintiffs Esther Long and Ronald Long have failed to comply with the Court’s orders and failed to continue prosecuting this action. Accordingly, the Court recommends the action be **DISMISSED** with prejudice.

I. Relevant Background

On May 27, 2016, Defendant Clopay Building Products Company, Inc., filed an ex parte application for modification of the Court’s scheduling order. (Doc. 35) The Court issued a minute order, directing Plaintiffs to “file a brief--not to exceed 5 pages--in opposition or a statement of non-opposition to Defendant's request to modify the scheduling order.” (Doc. 37) Plaintiffs failed to respond to the order, after which the Court ordered Plaintiffs and their counsel “to show cause in writing why sanctions, up to and including terminating sanctions, should not be imposed for their failure to comply with the Court’s order.” (Doc. 38 at 2) To date, Plaintiffs have continued to ignore the Court’s orders, and have not taken any further action to prosecute the matter.

1 **II. Failure to Prosecute and Obey the Court’s Orders**

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

13 **III. Discussion and Analysis**

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

20 In the case at hand, the public’s interest in expeditiously resolving this litigation and the Court’s
21 interest in managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d
22 983, 990 (9th Cir. 1999) (“The public’s interest in expeditious resolution of litigation always favors
23 dismissal”); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in
24 managing their dockets without being subject to noncompliant litigants). Judges in the Eastern District
25 of California carry the heaviest caseload in the nation, and this Court cannot, and will not hold, this
26 action in abeyance given Plaintiffs’ failure to comply with the Court’s orders and failure to prosecute.
27 The risk of prejudice to the defendants also weighs in favor of dismissal, since a presumption of injury
28 arises from the occurrence of unreasonable delay in prosecution of an action. *See Anderson v. Air West*,

