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8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
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11	ESTHER S. LONG, et al.) Case No.: 1:14-cv-01737 - DAD - JLT
12	Plaintiffs,) FINDINGS AND RECOMMENDATIONS) DISMISSING THE ACTION FOR PLAINTIFFS') FAILURE TO COMPLY WITH THE COURT'S) ORDERS AND FAILURE TO PROSECUTE)
13	v.	
14	HOME DEPOT, USA, INC., et al.,	
15	Defendants.)
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17	Plaintiffs Esther Long and Ronald Long have failed to comply with the Court's orders and	
18	failed to continue prosecuting this action. Accordingly, the Court recommends the action be	
19	DISMISSED with prejudice.	
20	I. Relevant Background	
21	On May 27, 2016, Defendant Clopay Building Products Company, Inc., filed an ex parte	
22	application for modification of the Court's scheduling order. (Doc. 35) The Court issued a minute	
23	order, directing Plaintiffs to "file a briefnot to exceed 5 pagesin opposition or a statement of non-	
24	opposition to Defendant's request to modify the scheduling order." (Doc. 37) Plaintiffs failed to	
25	respond to the order, after which the Court ordered Plaintiffs and their counsel "to show cause in	
26	writing why sanctions, up to and including terminating sanctions, should not be imposed for their	
27	failure to comply with the Court's order." (Doc. 38 at 2) To date, Plaintiffs have continued to ignore	
28	the Court's orders, and have not taken any further action to prosecute the matter.	
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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 and all sanctions . . . within the inherent power of the Court." LR 110. "District courts have inherent 4 5 power to control their dockets," and in exercising that power, a court may impose sanctions including dismissal of an action. Thompson v. Housing Authority of Los Angeles, 782 F.2d 829, 831 (9th Cir. 6 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 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment 9 10 of complaint); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for 11 12 failure to prosecute and to comply with local rules).

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III. Discussion and Analysis

To determine whether to dismiss an action for failure to prosecute and failure to obey a Court order, the Court must consider several factors, including: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Henderson*, 779 F.2d at 1423-24; *see also Ferdik*, 963 F.2d at 1260-61; *Thomspon*, 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 983, 990 (9th Cir. 1999) ("The public's interest in expeditious resolution of litigation always favors 22 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 action in abeyance given Plaintiffs' failure to comply with the Court's orders and failure to prosecute. 26 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,

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542 F.2d 522, 524 (9th Cir. 1976).

2 Significantly, the Ninth Circuit determined a court's warning to a party that failure to obey the 3 court's order will result in dismissal satisfies the requirement that less drastic sanctions be considered. Malone, 833 F.2d at 131; see also Ferdik, 963 F.2d at 1262. As the Ninth Circuit explained, "a 4 plaintiff can hardly be surprised" by a sanction of dismissal "in response to willful violation of a [court] 5 order." Malone, 833 F.2d at 133. Plaintiffs were warned failure to show cause may result in the 6 7 issuance of sanctions "up to and including terminating sanctions." (See Doc. 38 at 2) Significantly, a warning that dismissal would result from noncompliance with the Court's orders, satisfies the 8 obligation to consider lesser sanctions. See Malone, 833 F.2d at 131. Given these facts, the policy 9 10 favoring disposition of cases on their merits is outweighed by the factors in favor of dismissal.

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IV. Findings and Recommendations

Plaintiffs failed to comply with, or otherwise respond to, the Court's orders dated June 7, 2016 (Doc. 37) and June 15, 2016 (Doc. 38). Consequently, Plaintiffs also failed to continue the prosecution of this action. Based upon the foregoing, **IT IS HEREBY RECOMMENDED**:

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This action be **DISMISSED** with prejudice; and

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The Clerk of Court be DIRECTED to close the action.

17 These Findings and Recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local 18 19 Rules of Practice for the United States District Court, Eastern District of California. Within 14 days 20 after being served with these Findings and Recommendations, any party may file written objections 21 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file objections within the specified time may 22 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991); 23 24 Wilkerson v. Wheeler, 772 F.3d 834, 834 (9th Cir. 2014).

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IT IS SO ORDERED.

Dated: July 14, 2016

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/s/ Jennifer L. Thurston UNITED STATES MAGISTRATE JUDGE