



1 Plaintiff has failed to respond to the Court’s orders.

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

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

13 **III. Discussion and Analysis**

14 To determine whether to dismiss an action for failure to prosecute, failure to obey a court  
15 order, or failure to comply with the Local Rules, the Court must consider several factors, including:  
16 “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its  
17 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases  
18 on their merits; and (5) the availability of less drastic sanctions.” *Henderson*, 779 F.2d at 1423-24; *see*  
19 *also Ferdik*, 963 F.2d at 1260-61; *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. California Amplifier*, 191  
22 F.3d 983, 990 (9th Cir. 1999) (“The public’s interest in expeditious resolution of litigation always  
23 favors dismissal”). The risk of prejudice to the defendant also weighs in favor of dismissal, since a  
24 presumption of injury arises from the occurrence of unreasonable delay in prosecution of an action. *See*  
25 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). Similarly, the Court has an interest in  
26 managing its docket, given that the Eastern District of California is one of the busiest federal  
27 jurisdictions in the United States and its District Judges carry the heaviest caseloads in the nation.  
28 Because Plaintiff has failed to file an amended complaint, despite its necessity for the matter to

1 proceed, the Court’s interest in managing its docket weighs in favor of dismissal. *See Ferdik*, 963 F.2d  
2 at 1261 (recognizing that district courts have inherent interest in managing their dockets without being  
3 subject to noncompliant litigants).

4 In the order directing Plaintiff to file an amended complaint, he was “advised that the action  
5 may be dismissed for failure to comply with this Order.” (Doc. 8 at 7, emphasis in original.)  
6 Similarly, in the Order to Show Cause, the Court warned that it “may dismiss an action with prejudice,  
7 based upon a party’s failure to prosecute an action or failure to obey a court order . . .” (Doc. 9 at 1-2.)  
8 Thus, Plaintiff had adequate warning that dismissal would result from noncompliance with the Court’s  
9 orders, and his failure to prosecute the action. The Court’s warning to Plaintiff that his failure to  
10 comply with the order would result in dismissal satisfies the requirement that the Court consider less  
11 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 Good cause appearing **IT IS HEREBY ORDERED** that the Clerk of Court is DIRECTED to  
15 assign a United States District Judge to this action.

16 **V. Findings and Recommendations**

17 Plaintiff has failed to comply with the Court’s orders dated February 27, 2015 (Doc. 8) and  
18 April 7, 2015 (Doc. 9). Further, by failing to file an amended complaint, Plaintiff has failed to  
19 prosecute this action.

20 Accordingly, **IT IS HEREBY RECOMMENDED:**

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

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

1 Plaintiff is advised failure to file objections within the specified time may waive the right to  
2 appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991); *Wilkerson v.*  
3 *Wheeler*, 772 F.3d 834, 834 (9th Cir. 2014).

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5 IT IS SO ORDERED.

6 Dated: April 27, 2015

/s/ Jennifer L. Thurston  
7 UNITED STATES MAGISTRATE JUDGE  
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