

1 cause within fourteen days of the date of service of th[e] Order why the action should not be dismissed
2 for his failure to comply with the Court’s order or, in the alternative, to file an amended complaint.”
3 (*Id.* at 2, emphasis omitted.) Again, Plaintiff failed to respond to the 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.” Local Rule 110. “District courts have
8 inherent power to control their dockets,” and in exercising that power, a court may impose sanctions
9 including dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831
10 (9th Cir. 1986). A court may dismiss an action with prejudice, based on a party’s failure to prosecute
11 an action or failure to obey a court order, or failure to comply with local rules. *See, e.g. Ferdik v.*
12 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
13 requiring amendment of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)
14 (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
15 Cir. 1986) (dismissal for 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. California Amplifier*, 191
25 F.3d 983, 990 (9th Cir. 1999) (“The public’s interest in expeditious resolution of litigation always
26 favors dismissal”). The risk of prejudice to the defendant also weighs in favor of dismissal, since a
27 presumption of injury arises from the occurrence of unreasonable delay in prosecution of an action. *See*
28 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). Similarly, the Court has an interest in

1 managing its docket, given that the Eastern District of California is one of the busiest district courts in
2 the United States and its District Judges carry the heaviest caseloads in the nation. Because Plaintiff
3 has failed to file an amended complaint, despite its necessity for the matter to proceed, the Court’s
4 interest in managing its docket weighs in favor of dismissal. *See Ferdik*, 963 F.2d at 1261 (recognizing
5 that district courts have an inherent interest in managing their dockets without being subject to
6 noncompliant litigants).

7 Notably, when the Court dismissed the complaint with leave to amend, Plaintiff was warned:
8 **“If Plaintiff fails to comply with this order, the action will be dismissed for failure to obey a court**
9 **order.”** (Doc. 9 at 5, emphasis in original.) In addition, in the order to show cause, Plaintiff was
10 warned that an action may be dismissed “based on a party’s failure to prosecute an action or failure to
11 obey a court order.” (Doc. 10 at 2.) Thus, Plaintiff had adequate warning that dismissal would result
12 from her noncompliance with the Court’s orders, and her failure to prosecute the action. These
13 warnings that failure to comply with the Court’s orders would result in sanctions, including dismissal of
14 the action, satisfy the requirement that the Court consider less drastic measures. *Ferdik*, 963 F.2d at
15 1262; *Henderson*, 779 F.2d at 1424. Given these facts, the policy favoring disposition of cases on their
16 merits is outweighed by the factors in favor of dismissal.

17 **IV. Findings and Recommendations**

18 Plaintiff has failed to comply with the Court’s orders dated April 27, 2015 (Doc. 9) and May 29,
19 2015 (Doc. 10), and has failed to prosecute this action by filing an amended complaint.

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
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 with
27 the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
28 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may

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waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991);
Wilkerson v. Wheeler, 772 F.3d 834, 834 (9th Cir. 2014).

IT IS SO ORDERED.

Dated: June 19, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE