1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 GARY DALE BARGER, Case No.: 1:15-cv-00306-JLT 12 Petitioner, FINDINGS AND RECOMMENDATIONS TO DISMISS PETITION FOR FAILURE TO OBEY A 13 v. **COURT ORDER** 14 CDCR DIRECTOR, et al., ORDER DIRECTING THAT OBJECTIONS BE FILED WITHIN TWENTY-ONE DAYS 15 Respondents. 16 ORDER DIRECTING CLERK OF COURT TO ASSIGN DISTRICT JUDGE TO CASE 17 18 The Court ordered Petitioner to amend his complaint and, despite the Court granting him 19 additional time, he has failed to do so and has not had any contact with the Court in months. Thus, the 20 Court recommends the petition be **DISMISSED**. 21 I. **Procedural History** 22 Petitioner filed the instant habeas petition on February 24, 2015. (Doc. 1). On March 5, 2015, 23 the Court issued an order requiring Petitioner to amend his petition within thirty days. (Doc. 8). On 24 May 8, 2015, Petitioner requested an additional thirty days within which to file his amended petition 25 (Doc. 14) and the Court granted this request. (Doc. 15). Since this time, Petitioner has failed to 26 comply with or otherwise respond to the Court's order. Indeed, Petitioner has not corresponded with

the Court since the May 6, 2015 request for additional time, a period that now spans almost seven

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months.

Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the inherent power of the Court." District Courts have the inherent power to control their dockets and "in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case. Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-1261 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-1441 (9th Cir. 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action for lack of prosecution, the court must consider several factors: (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 Respondents; (4) the public policy favoring disposition of cases on their merits; and, (5) the availability of less drastic alternatives. Henderson, 779 F.2d at 1423; Ghazali, 46 F.3d at 53; Ferdik, 963 F.2d at 1260-1261; Malone, 833 F.2d at 130; Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-1424.

Here, the Court finds that the public's interest in expeditiously resolving this litigation and the Court's interest in managing the docket weigh in favor of dismissal, as this case has been pending since February 24, 2015. The third factor, risk of prejudice to Respondent, also weighs in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that failure to obey the court's order will result in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;

Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's order dated May 20, 2015, 1 2 expressly stated: "Petitioner is forewarned that failure to comply with this order will result in a 3 recommendation to dismiss the petition pursuant." (Doc. 15, p. 3). Petitioner was also advised that no further extensions of time would be granted. (Id.). Thus, Petitioner had adequate warning that 4 5 dismissal would result from his noncompliance with the Court's order. 6 **ORDER** Accordingly, the Clerk of the Court is HEREBY DIRECTED to assign a United States District 7 Judge to this case. 8 **RECOMMENDATION** 9 For the foregoing reasons, the Court HEREBY RECOMMENDS that the instant petition for 10 writ of habeas corpus (Doc. 1), be **DISMISSED** for failure to obey the Court's orders. 11 This Findings and Recommendation is submitted to the United States District Court Judge 12 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the 13 Local Rules of Practice for the United States District Court, Eastern District of California. 14 Within 21 days after being served with a copy, any party may file written objections with the court and 15 16 serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the objections shall be served and filed within **ten days** 17 after service of the objections. The Court will then review the Magistrate Judge's ruling pursuant to 28 18 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time 19 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 20 21 1991). 22 IT IS SO ORDERED. 23 24 /s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE Dated: **October 28, 2015** 25 26

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