

1 Court reminded Plaintiff that the action may be dismissed for Plaintiff’s failure to prosecute and failure
2 to comply with the Court’s orders. (*Id.* at 2) To date, Plaintiff has failed to comply with the Court’s
3 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.” LR 110. “District courts have inherent
8 power to control their dockets,” and in exercising that power, a court may impose sanctions including
9 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.
10 1986). A court may dismiss an action with prejudice, based on a party’s failure to prosecute an action
11 or failure to obey a court order, or failure to comply with local rules. *See, e.g. Ferdik v. Bonzelet*, 963
12 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment
13 of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
14 comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
15 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. Cal. Amplifier*, 191 F.3d
25 983, 990 (9th Cir. 1999) (“The public’s interest in expeditious resolution of litigation always favors
26 dismissal”); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in
27 managing their dockets without being subject to noncompliant litigants). Judges in the Eastern District
28 of California carry the heaviest caseload in the nation, and this Court cannot, and will not hold, this

1 action in abeyance given Plaintiff's failure to comply with the deadlines set forth by the Court and
2 failure to prosecute. The risk of prejudice to the defendant also weighs in favor of dismissal, since a
3 presumption of injury arises from the occurrence of unreasonable delay in prosecution of an action. *See*
4 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

5 Notably, the court warned: "**If Plaintiff fails to comply with this order to file an amended**
6 **complaint, the Court may dismiss this action due to his failure to prosecute it and his failure to**
7 **obey the Court's order.**" (Doc. 16 at 13, emphasis in original). In the Order to Show Cause, the
8 Court reminded Plaintiff that an action may be dismissed "based on a party's failure to prosecute an
9 action or failure to obey a court order." (Doc. 17 at 2) Thus, Plaintiff had adequate warnings that
10 dismissal would result from his noncompliance with the Court's orders, and his failure to prosecute the
11 action. Further, these warnings satisfy the requirement that the Court consider less drastic measures.
12 *Ferdik*, 963 F.2d at 1262; *Henderson*, 779 F.2d at 1424. Given these facts, the policy favoring
13 disposition of cases on their merits is outweighed by the factors in favor of dismissal.

14 **IV. Findings and Recommendations**

15 Plaintiff failed to comply with, or otherwise respond to, the Court's orders dated November 2,
16 2015 (Doc. 16) and December 9, 2015 (Doc. 17). Consequently, Plaintiff has also failed to prosecute
17 this action through his failure to file a First Amended Complaint.

18 Based upon the foregoing, **IT IS HEREBY RECOMMENDED:**

- 19 1. This action be **DISMISSED without prejudice**; and
- 20 2. The Clerk of Court be **DIRECTED** to close the action.

21 These Findings and Recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
23 Rules of Practice for the United States District Court, Eastern District of California. Within 14 days
24 after being served with these Findings and Recommendations, Plaintiff may file written objections with
25 the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
26 Recommendations."

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1 Plaintiff is advised that 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: December 30, 2015

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