

EASTERN DISTRICT OF CALIFORNIA

Defendant.

FOURTEEN-DAY DEADLINE

Based on Plaintiff's failure to comply, on October 13, 2016, the Court issued an order directing Plaintiff, within fourteen (14) days, to either (1) complete and return the order re

1 consent or request for reassignment, and submit an application to proceed in forma pauperis,
2 completed and signed, or in the alternative, pay the \$400.00 filing fee for this action; OR (2)
3 Show cause in writing why this action should not be dismissed for failure to prosecute and
4 failure to obey the court's orders. Plaintiff was warned that the failure to respond would result in
5 dismissal of this action for failure to prosecute and failure to obey a court order. (ECF No. 5).
6 More than fourteen (14) days have passed since service of the Court's order, and Plaintiff has not
7 complied or otherwise contacted the Court.

8 **II. Discussion**

9 Local Rule 110 provides that "[f]ailure . . . of a party to comply with these Rules or with
10 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
11 within the inherent power of the Court." District courts have the inherent power to control their
12 dockets and "[i]n the exercise of that power they may impose sanctions including, where
13 appropriate, . . . dismissal." *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
14 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
15 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*,
16 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v.*
17 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
18 requiring amendment of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-33 (9th
19 Cir. 1987) (dismissal for failure to comply with court order).

20 In determining whether to dismiss an action, the Court must consider several factors: (1)
21 the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its
22 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
23 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779
24 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

25 Despite multiple attempts to communicate with Plaintiff, she has been non-responsive to
26 the Court's orders. The Court cannot effectively manage its docket if Plaintiff ceases litigating
27 her case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.
28

1 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
2 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
3 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs
4 against dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*,
5 291 F.3d 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
6 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
7 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Products*
8 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

9 Finally, the court’s warning to a party that failure to obey the court’s order will result in
10 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
11 *Malone*, 833 at 132-133; *Henderson*, 779 F.2d at 1424. The Court’s October 13, 2016 order
12 expressly warned Plaintiff that her failure to comply would result in dismissal of this action for
13 failure to prosecute and failure to obey a court order. (ECF No. 5, p. 2). Plaintiff also was
14 warned of the potential for dismissal by the Court’s August 18, 2016 order directing her to file an
15 application to proceed in forma pauperis or pay the filing fee for this action. (ECF No. 4). Thus,
16 Plaintiff had adequate warning that dismissal could result from her noncompliance.

17 **III. Conclusion and Recommendation**

18 Accordingly, it is HEREBY RECOMMENDED that this action be dismissed for the
19 failure to obey the Court’s August 18, 2016 order (ECF No. 4), and October 13, 2016 order (ECF
20 No. 5), and for Plaintiff’s failure to prosecute this action.

21
22 These Findings and Recommendations will be submitted to the United States District
23 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
24 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
25 file written objections with the Court. The document should be captioned “Objections to
26 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
27 objections within the specified time may result in the waiver of the “right to challenge the
28

1 magistrate's factual findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
2 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3
4 IT IS SO ORDERED.

5 Dated: November 9, 2016

/s/ Barbara A. McAuliffe
6 UNITED STATES MAGISTRATE JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28