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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JOHN STINCHECUM, et al.,  
Plaintiffs,  
v.  
DOLLAR GENERAL CORP.,  
Defendant.

Case No. 1:17-cv-00240-DAD-SAB  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSING ACTION  
FOR FAILURE TO COMPLY WITH  
COURT ORDER  
(ECF Nos. 27, 28)  
OBJECTIONS DUE WITHIN FOURTEEN  
DAYS

Plaintiffs John Stinchecum and Peta Stinchecum filed this action against Dollar General Corp. on December 5, 2016, in the Fresno County Superior Court. (ECF No. 1, Exhibit A.) On February 17, 2017, Defendant removed this action to the Eastern District of California. (ECF No. 1.) On June 20, 2018, Defendant filed a notice that the parties have agreed to settle this matter. (ECF No. 26.) An order issued requiring the parties to file dispositional documents within thirty-days of June 21, 2018. (ECF No. 27.) The parties did not file dispositive documents in compliance with the June 21, 2018 order.

On August 1, 2018, an order issued requiring the parties to show cause within fourteen days why this action should not be dismissed for the failure to comply with the June 21, 2018. (ECF No. 28.) The parties did not respond to the August 1, 2018 order.

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1 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these  
2 Rules or with any order of the Court may be grounds for imposition by the Court of any and all  
3 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to  
4 control its docket and may, in the exercise of that power, impose sanctions where appropriate,  
5 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.  
6 2000).

7 A court may dismiss an action based on a party’s failure to prosecute an action, failure to  
8 obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52,  
9 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d  
10 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended  
11 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to  
12 comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.  
13 United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply  
14 with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack  
15 of prosecution and failure to comply with local rules).

16 “In determining whether to dismiss an action for lack of prosecution, the district court is  
17 required to consider several factors: ‘(1) the public’s interest in expeditious resolution of  
18 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants;  
19 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less  
20 drastic sanctions.’ ” Carey, 856 F.2d at 1440 (quoting Henderson v. Duncan, 779 F.2d 1421,  
21 1423 (9th Cir. 1986)). These factors guide a court in deciding what to do, and are not conditions  
22 that must be met in order for a court to take action. In re Phenylpropanolamine (PPA) Products  
23 Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted).

24 In this instance, the public’s interest in expeditious resolution of the litigation and the  
25 Court’s need to manage its docket weigh in favor of dismissal. In re Phenylpropanolamine  
26 (PPA) Products Liability Litigation, 460 F.3d at 1226. The parties have informed the Court that  
27 they have settled this action. The parties have been ordered to file dispositive documents and a  
28 to show cause for the failure to do so, but have failed to respond to either order of this Court.

1 This action cannot remain on the docket indefinitely and can proceed no further without the  
2 participation of the parties. The failure to comply with the orders of the Court and the Local  
3 Rules hinders the Court’s ability to move this action towards disposition, and indicates that the  
4 parties do not intend to diligently litigate this action.

5 As it appears that the parties have settled the action, the risk of prejudice does not weigh  
6 for against dismissal of the action.

7 The public policy in favor of deciding cases on their merits is greatly outweighed by the  
8 factors in favor of dismissal. This action can proceed no further without the cooperation of the  
9 parties and compliance with the order at issue and the Local Rules. This action cannot simply  
10 remain idle on the Court’s docket, unprosecuted. In this instance, the fourth factor does not  
11 outweigh the parties’ failure to comply with the Court’s orders.

12 Finally, a court’s warning to a party that their failure to obey the court’s order will result  
13 in dismissal satisfies the “consideration of alternatives” requirement. Ferdik, 963 F.2d at 1262;  
14 Malone, 833 F.2d at 132-33; Henderson, 779 F.2d at 1424. The Court’s August 1, 2018 order  
15 requiring the parties to show cause why this action should not be dismissed expressly stated, “  
16 The parties are advised that failure to comply with this order will result in the recommendation that  
17 this action be dismissed for failure to comply with a court order.” (ECF No. 28 at 2:3-5.) Thus, the  
18 parties had adequate warning that dismissal would result from their noncompliance with the  
19 Court’s order.

20 Accordingly, IT IS HEREBY RECOMMENDED that this action be DISMISSED for the  
21 parties’ failure to comply with orders of the court.

22 This findings and recommendations is submitted to the district judge assigned to this  
23 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within fourteen  
24 (14) days of service of this recommendation, the parties may file written objections to this  
25 findings and recommendations with the Court and serve a copy on all parties. Such a document  
26 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The  
27 district judge will review the magistrate judge’s findings and recommendations pursuant to 28  
28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified

1 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th  
2 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: August 22, 2018

  
UNITED STATES MAGISTRATE JUDGE

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