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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 KAYLA DANDO,

12 Plaintiff,

13 v.

14 COMMISSIONER OF SOCIAL SECURITY,

15 Defendant.

Case No. 1:17-cv-00841-DAD-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
WITHOUT PREJUDICE FOR FAILURE TO
STATE A CLAIM AND FAILURE TO
COMPLY WITH COURT ORDER

(ECF No. 4)

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

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18 Plaintiff Kayla Dando filed a complaint on June 23, 2017, against the Commissioner of
19 Social Security. (ECF No. 1.) On June 30, 2017, Plaintiff's complaint was screened and
20 dismissed for failure to state a claim. (ECF No. 4.) Plaintiff was ordered to file an amended
21 complaint within thirty days of the June 30, 2017 order. More than thirty days have passed and
22 Plaintiff has not filed an amended complaint or otherwise responded to the June 30, 2017 order.

23 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
24 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
25 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to
26 control its docket and may, in the exercise of that power, impose sanctions where appropriate,
27 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.
28 2000).

1 A court may dismiss an action based on a party's failure to prosecute an action, failure to
2 obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52,
3 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
4 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended
5 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to
6 comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.
7 United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply
8 with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack
9 of prosecution and failure to comply with local rules).

10 In determining whether to dismiss an action for failure to comply with a pretrial order,
11 the Court must weigh "(1) the public's interest in expeditious resolution of litigation; (2) the
12 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
13 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
14 sanctions." In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1226
15 (9th Cir. 2006) (internal quotations and citations omitted). These factors guide a court in
16 deciding what to do, and are not conditions that must be met in order for a court to take action.
17 Id. (citation omitted).

18 In this instance the public's interest in expeditious resolution of the litigation and the
19 Court's need to manage its docket weigh in favor of dismissal. In re Phenylpropanolamine
20 (PPA) Products Liability Litigation, 460 F.3d at 1226. Plaintiff was ordered to file an amended
21 complaint within thirty days of June 30, 2017. Plaintiff has been provided with the legal
22 standards that would apply to her claims and the opportunity to file an amended complaint.
23 Plaintiff has neither filed an amended complaint nor otherwise responded to the Court's order.
24 Plaintiff's failure to comply with the orders of the Court hinders the Court's ability to move this
25 action towards disposition, and indicates that Plaintiff does not intend to diligently litigate this
26 action.

27 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a
28 rebuttable presumption of prejudice to the defendant in this action. In re Eisen, 31 F.3d 1447,

1 1452-53 (9th Cir. 1994). The risk of prejudice to the defendant also weighs in favor of dismissal.

2 The public policy in favor of deciding cases on their merits is greatly outweighed by the
3 factors in favor of dismissal. It is Plaintiff's responsibility to move this action forward. This
4 action can proceed no further without Plaintiff's cooperation and compliance with the order at
5 issue, and the action cannot simply remain idle on the Court's docket, unprosecuted. In this
6 instance, the fourth factor does not outweigh Plaintiff's failure to comply with the Court's orders.

7 Finally, a court's warning to a party that their failure to obey the court's order will result
8 in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;
9 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's June 30, 2017 order requiring
10 Plaintiff to file an amended complaint expressly stated: "If Plaintiff fails to file an amended
11 complaint in compliance with this order, this action will be dismissed for failure to state a claim."
12 (ECF No. 4 at 7.) Thus, Plaintiff had adequate warning that dismissal would result from his
13 noncompliance with the Court's order and his failure to state a claim.

14 Accordingly, it is HEREBY RECOMMENDED that this action be DISMISSED for
15 Plaintiff's failure to state a claim and failure to comply with the June 30, 2017 order.

16 IT IS SO ORDERED.

17 Dated: August 9, 2017

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20 UNITED STATES MAGISTRATE JUDGE
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