

1 On February 27, 2018, Mr. Whittington filed a motion to withdraw as counsel. (Doc. 23) The
2 Court held at hearing on the motion to withdraw on April 6, 2018. Plaintiffs did not oppose the motion
3 either in writing or at the hearing. (See Doc. 31 at 3)

4 The Court granted counsel’s motion to withdraw on April 6, 2018. (Doc. 31) At that time, the
5 Court ordered: “Plaintiffs **SHALL** notify the Court in writing of their intent to proceed with this action
6 no later than **April 20, 2018**.” (*Id.* at 4, emphasis in original) In addition, the Court advised Plaintiffs
7 that “failure to comply with this order will result in a recommendation that the action be dismissed
8 pursuant to Local Rule 110.” (*Id.*, emphasis omitted). After plaintiffs Veronica Lira, Viveny Aceves,
9 and Abigail Vilorio failed to respond to the Court’s order, the Court recommended their claims be
10 dismissed.

11 The order served upon Sarai Lorenzana was returned as undeliverable to the Court on April 13,
12 2018. The Court re-served Ms. Lorenzana at the address provided by the expired forwarding order and
13 ordered Ms. Lorenzana to respond “**[n]o later than May 4, 2018**.” (Doc. 32 at 2, emphasis in original)
14 To date, this order has not been returned as undeliverable, and Ms. Lorenzana has not complied with
15 the Court’s order, or taken any other action to continue prosecuting the claims in this action.

16 **II. Failure to Prosecute and Obey the Court’s Orders**

17 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: “Failure of counsel or of a
18 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any
19 and all sanctions . . . within the inherent power of the Court.” LR 110. “District courts have inherent
20 power to control their dockets,” and in exercising that power, a court may impose sanctions including
21 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.
22 1986). A court may dismiss an action for a party’s failure to prosecute an action or failure to obey a
23 court order. *See, e.g. Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure
24 to comply with an order to file an amended complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128,
25 130 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779
26 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

27 **III. Discussion and Analysis**

28 To determine whether to dismiss an action for failure to prosecute and failure to obey a Court

1 order, the Court must consider several factors, including: “(1) the public’s interest in expeditious
2 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
3 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability
4 of less drastic sanctions.” *Henderson*, 779 F.2d at 1423-24; *see also Ferdik*, 963 F.2d at 1260-61;
5 *Thomson*, 782 F.2d at 831.

6 **A. Public interest and the Court’s docket**

7 In the case at hand, the public’s interest in expeditiously resolving this litigation and the Court’s
8 interest in managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d
9 983, 990 (9th Cir. 1999) (“The public’s interest in expeditious resolution of litigation always favors
10 dismissal”); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in
11 managing their dockets without being subject to noncompliant litigants). This Court cannot, and will
12 not hold, this case in abeyance based upon the plaintiffs’ failure to comply with the Court’s order and
13 failure to take action to continue prosecution in a timely manner. *See Morris v. Morgan Stanley & Co.*,
14 942 F.2d 648, 652 (9th Cir. 1991) (a plaintiff has the burden “to move toward... disposition at a
15 reasonable pace, and to refrain from dilatory and evasive tactics”). Accordingly, these factors weigh in
16 favor of terminating sanctions.

17 **B. Prejudice to Defendants**

18 To determine whether the defendant suffers prejudice, the Court must “examine whether the
19 plaintiff’s actions impair the ... ability to go to trial or threaten to interfere with the rightful decision of
20 the case.” *Malone*, 833 F.2d at 131 (citing *Rubin v. Belo Broadcasting Corp.*, 769 F.2d 611, 618 (9th
21 Cir. 1985)). Significantly, a presumption of prejudiced arises when a plaintiff unreasonably delays the
22 prosecution of an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). Here, Ms.
23 Lorenzana has not taken any action to further prosecuting the action, despite being ordered by the Court
24 to do so. Therefore, this factor weighs in favor of dismissal of her claims.

25 **C. Consideration of less drastic sanctions**

26 The Court “abuses its discretion if it imposes a sanction of dismissal without first considering
27 the impact of the sanction and the adequacy of less drastic sanctions.” *United States v. Nat’l Medical*
28 *Enterprises, Inc.*, 792 F.2d 906, 912 (9th Cir. 1986). However, a court’s warning to a party that the

1 failure to obey could result in dismissal satisfies the “consideration of alternatives” requirement. *See*
2 *Malone*, 833 F.2d at 133; *Ferdik*, 963 F.2d at 1262. As the Ninth Circuit explained, “a plaintiff can
3 hardly be surprised” by a sanction of dismissal “in response to willful violation of a pretrial order.”
4 *Malone*, 833 F.2d at 133.

5 The Court warned the plaintiffs, including Ms. Lorenzana, of their obligation to file an
6 indication of their intent to proceed in this action and that their “**failure to comply with this order will**
7 **result in a recommendation that the action be dismissed pursuant to Local Rule 110.**” (Doc. 31 at
8 4, emphasis in original) In re-serving the order, the Court again informed Ms. Lorenzana that “**her**
9 **failure to respond will result in a recommendation that the action be dismissed for her failure to**
10 **comply with the Court’s orders and her failure to prosecute this action.**” (Doc. 32 at 2, emphasis
11 in original) Importantly, the Court need only warn a party once that the matter could be dismissed for
12 failure to comply to satisfy the requirements of Rule 41. *Ferdik*, 963 F.2d at 1262; *see also Titus v.*
13 *Mercedes Benz of North America*, 695 F.2d 746, 749 n.6 (3rd Cir. 1982) (identifying a “warning” as an
14 alternative sanction). Accordingly, the warnings Ms. Lorenzana received satisfied the requirement that
15 the Court consider lesser sanctions, and this factor weighs in favor of dismissal of her claims. *See*
16 *Ferdik*, 963 F.2d at 1262; *Henderson*, 779 F.2d at 1424; *Titus*, 695 F.2d at 749 n.6.

17 **D. Public policy**

18 Given the failure of Ms. Lorenzana to prosecute her claims and failure to comply with the
19 Court’s order, the policy favoring disposition of cases on their merits is outweighed by the factors in
20 favor of dismissal. *See Malone*, 833 F.2d at 133, n.2 (explaining that although “the public policy
21 favoring disposition of cases on their merits . . . weighs against dismissal, it is not sufficient to
22 outweigh the other four factors”).

23 **IV. Findings and Recommendations**

24 Plaintiff Ms. Lorenzana failed to comply with the Court’s order (Doc. 32) and thereby
25 indicated she has abandoned the action. Based upon the foregoing, the Court **RECOMMENDS:**

- 26 1. The claims of Sarai Lorenzana be **DISMISSED** without prejudice; and
- 27 2. The Clerk of Court be **DIRECTED** to close this action.

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1 These Findings and Recommendations are submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
3 Rules of Practice for the United States District Court, Eastern District of California. Within fourteen
4 days after being served with these Findings and Recommendations, any party may file written
5 objections. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
6 Recommendations.” Plaintiffs are advised that failure to file objections within the specified time may
7 waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991);
8 *Wilkerson v. Wheeler*, 772 F.3d 834, 834 (9th Cir. 2014).

9
10 IT IS SO ORDERED.

11 Dated: May 8, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE