

1 **I. Failure to Prosecute and Obey the Court’s Orders**

2 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: “Failure of counsel or of a
3 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any
4 and all sanctions . . . within the inherent power of the Court.” LR 110. “District courts have inherent
5 power to control their dockets,” and in exercising that power, a court may impose sanctions including
6 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.
7 1986). A court may dismiss an action for a party’s failure to prosecute an action or failure to obey a
8 court order. *See, e.g. Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure
9 to comply with an order to file an amended complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128,
10 130 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779
11 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

12 **III. Discussion and Analysis**

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

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

20 The public’s interest in expeditiously resolving this litigation and the Court’s interest in
21 managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th
22 Cir. 1999) (“The public’s interest in expeditious resolution of litigation always favors dismissal”);
23 *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in managing their
24 dockets without being subject to noncompliant litigants). This Court cannot hold this case as to Ms.
25 Severi in abeyance based upon her failure to comply with the Court’s order and failure to prosecute this
26 action. *See Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991) (a plaintiff has the
27 burden “to move toward . . . disposition at a reasonable pace, and to refrain from dilatory and evasive
28 tactics”). The fact that Ms. Severi has demonstrated little interest in this case and has refused to

1 cooperate in the prosecution of the action, weighs in favor of dismissal of the action as to her.

2 **B. Prejudice to Defendant**

3 To determine whether the defendant suffers prejudice, the Court must “examine whether the
4 plaintiff’s actions impair the ... ability to go to trial or threaten to interfere with the rightful decision of
5 the case.” *Malone*, 833 F.2d at 131 (citing *Rubin v. Belo Broadcasting Corp.*, 769 F.2d 611, 618 (9th
6 Cir. 1985)). Significantly, a presumption of prejudiced arises when a plaintiff unreasonably delays the
7 prosecution of an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The plaintiff
8 has not taken any action to further her prosecution of the action, despite urging by the Court. In
9 addition, the failure to produce herself for deposition, prejudices the defendants and co-plaintiff, Mr.
10 Severi. Therefore, this factor weighs in favor of dismissal.

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

12 The Court “abuses its discretion if it imposes a sanction of dismissal without first considering
13 the impact of the sanction and the adequacy of less drastic sanctions.” *United States v. Nat’l Medical*
14 *Enterprises, Inc.*, 792 F.2d 906, 912 (9th Cir. 1986). However, a court’s warning to a party that the
15 failure to obey could result in dismissal satisfies the “consideration of alternatives” requirement. *See*
16 *Malone*, 833 F.2d at 133; *Ferdik*, 963 F.2d at 1262. As the Ninth Circuit explained, “a plaintiff can
17 hardly be surprised” by a sanction of dismissal “in response to willful violation of a pretrial order.”
18 *Malone*, 833 F.2d at 133.

19 The Court warned the plaintiff that “her failure to comply with the Local Rules, Federal Rules,
20 or any Court order, will result in a recommendation that the action be dismissed as to her pursuant to
21 Local Rule 110.” (Doc. 49 at 4.) The Court need only warn a party once that the matter could be
22 dismissed for failure to comply to satisfy the requirements of Rule 41. *Ferdik*, 963 F.2d at 1262; *see*
23 *also Titus v. Mercedes Benz of North America*, 695 F.2d 746, 749 n.6 (3rd Cir. 1982) (identifying a
24 “warning” as an alternative sanction). Accordingly, the warning Ms. Severi satisfied the requirement
25 that the Court consider lesser sanctions, and this factor weighs in favor of dismissal of the action. *See*
26 *Ferdik*, 963 F.2d at 1262; *Henderson*, 779 F.2d at 1424; *Titus*, 695 F.2d at 749 n.6.

27 **D. Public policy**

28 Given Ms. Severi’s failure to prosecute the action and her failure to comply with the Court’s

1 order, the policy favoring disposition of cases on their merits is outweighed by the factors in favor of
2 dismissal. *See Malone*, 833 F.2d at 133, n.2 (explaining that although “the public policy favoring
3 disposition of cases on their merits . . . weighs against dismissal, it is not sufficient to outweigh the
4 other four factors”).

5 **IV. Findings and Recommendations**

6 According, the Court **RECOMMENDS**:

- 7 1. This action **as to Myranda Severi only** be **DISMISSED** without prejudice; and
- 8 2. The Clerk of Court be **DIRECTED** to close the action **as to Myranda Severi only**.

9 These Findings and Recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
11 Rules of Practice for the United States District Court, Eastern District of California. Within fourteen
12 days after being served with these Findings and Recommendations, Plaintiffs may file written
13 objections. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
14 Recommendations.”

15 Plaintiff is advised that failure to file objections within the specified time may waive the right to
16 appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991); *Wilkerson v.*
17 *Wheeler*, 772 F.3d 834, 834 (9th Cir. 2014).

18
19 IT IS SO ORDERED.

20 Dated: **April 12, 2019**

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