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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA

8 SANTA AMALIA ALVAREZ, et al.,

9 Plaintiffs,

10 v.

11 JOHNSON & JOHNSON, et al.,

12 Defendants.

Case No. 1:17-cv-00996-AWI-SAB

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSING ACTION  
FOR FAILURE TO COMPLY WITH  
COURT ORDER

OBJECTIONS DUE WITHIN TEN DAYS

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14 Plaintiff Santa Amalia Alvarez filed this action on July 27, 2017. (ECF No. 1.) On July  
15 28, 2017, an order issued striking the complaint for being unsigned and Plaintiff was ordered to  
16 file a signed complaint by close of business on July 31, 2017. (ECF No. 5.) Plaintiff did not file  
17 a signed complaint or otherwise respond to the July 28, 2017 order. Therefore, on August 2,  
18 2017, an order issued requiring Plaintiff to show cause on or before August 7, 2017, why this  
19 action should not be dismissed for failure to comply with the July 28, 2017 order. Plaintiff did  
20 not respond to the August 2, 2017 order.

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

27 A court may dismiss an action based on a party’s failure to prosecute an action, failure to  
28 obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52,

1 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d  
2 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order to file an amended  
3 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to  
4 comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v.  
5 United States Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply  
6 with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack  
7 of prosecution and failure to comply with local rules).

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

16 In this instance the public’s interest in expeditious resolution of the litigation and the  
17 Court’s need to manage its docket weigh in favor of dismissal. Id. Plaintiff was ordered to file a  
18 signed complaint by July 31, 2017. After failing to comply or respond to the order, Plaintiff was  
19 ordered to show cause why this action should not be dismissed for such failure to comply.  
20 Plaintiff has neither filed a signed complaint nor otherwise responded to the two orders issued by  
21 this Court. Plaintiff’s failure to comply with the orders of the Court hinders the Court’s ability to  
22 move this action towards disposition, and indicates that Plaintiff does not intend to diligently  
23 litigate this action.

24 Since it appears that Plaintiff does not intend to litigate this action diligently there arises a  
25 rebuttable presumption of prejudice to the defendants in this action. In re Eisen, 31 F.3d 1447,  
26 1452-53 (9th Cir. 1994). The risk of prejudice to the defendants also weighs in favor of  
27 dismissal.

28 The public policy in favor of deciding cases on their merits is greatly outweighed by the

1 factors in favor of dismissal. It is Plaintiff's responsibility to move this action forward. There is  
2 currently no complaint filed in this action. This action can proceed no further without Plaintiff's  
3 cooperation and compliance with the order at issue, and the action cannot simply remain idle on  
4 the Court's docket, unprosecuted. In this instance, the fourth factor does not outweigh Plaintiff's  
5 failure to comply with the Court's orders.

6 Finally, a court's warning to a party that their failure to obey the court's order will result  
7 in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;  
8 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court's August 2, 2017 order  
9 required Plaintiff to show cause why this action should not be dismissed for failure to comply  
10 with the July 28, 2017 order. Thus, Plaintiff had adequate warning that dismissal would result  
11 from his noncompliance with the Court's order.

12 Accordingly, it is HEREBY RECOMMENDED that this action be DISMISSED, without  
13 prejudice, for Plaintiff's failure to comply with orders of this Court.

14 This findings and recommendations is submitted to the district judge assigned to this  
15 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within ten (10)  
16 days of service of this recommendation, Plaintiff may file written objections to this findings and  
17 recommendations with the Court. Such a document should be captioned "Objections to  
18 Magistrate Judge's Findings and Recommendations." The district judge will review the  
19 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C).  
20 Plaintiff is advised that failure to file objections within the specified time may result in the  
21 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing  
22 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23 IT IS SO ORDERED.

24 Dated: August 8, 2017

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27 UNITED STATES MAGISTRATE JUDGE  
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