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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA

8 PATRICIA J. MCNEIL,

9 Movant,

10 v.

11 SOCIAL SECURITY ADMINISTRATION,
12 OFFICE OF THE INSPECTOR GENERAL,

13 Respondent.

Case No. 1:17-mc-00036-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING MATTER
FOR FAILURE TO PROSECUTE

OBJECTIONS DUE WITHIN FOURTEEN
DAYS

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15 This is a miscellaneous action filed by Movant Patricia J. McNeil (“Movant”)
16 challenging Respondent, Social Security Administration, Office of the Inspector General’s
17 (“Social Security Administration”) attempt to obtain access to her financial records from
18 Comerica Bank/Direct Express Card (“Comerica”) pursuant to the Right to Financial Privacy Act
19 of 1978 (“RFPA”). On June 16, 2017, an order issued directing Movant to file an amended
20 motion within thirty days. Movant did not file an amended motion and on August 1, 2017, a
21 order requiring Movant to show cause why this action should not be dismissed for failure to
22 comply with the June 16, 2017 order was filed. Movant was provided with ten days in which to
23 show cause. More than ten days have passed and Movant has not filed a response to the order to
24 show cause or otherwise responded to the August 1, 2017 order.

25 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
26 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
27 sanctions . . . within the inherent power of the Court.” The Court has the inherent power to
28 control its docket and may, in the exercise of that power, impose sanctions where appropriate,

1 including dismissal of the action. Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.
2 2000).

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

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

20 In this instance the public's interest in expeditious resolution of the litigation and the
21 Court's need to manage its docket weigh in favor of dismissal. In re Phenylpropanolamine
22 (PPA) Products Liability Litigation, 460 F.3d at 1226. Movant was ordered to file an amended
23 motion within thirty days of June 16, 2017. Movant was provided with the legal standards that
24 apply to the motion and what was required in order to correct the deficiencies in the motion file
25 don June 12, 2017. Movant has neither filed an amended motion nor otherwise responded to the
26 Court's order. Plaintiff's failure to comply with the orders of the Court hinders the Court's
27 ability to move this matter towards disposition, and indicates that Plaintiff does not intend to
28 diligently litigate this action.

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

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

10 Finally, a court's warning to a party that their failure to obey the court's order will result
11 in dismissal satisfies the "consideration of alternatives" requirement. Ferdik, 963 F.2d at 1262;
12 Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The June 15, 2017 order advised movant
13 that the failure to file an amended motion would result in dismissal of this action. (ECF No. 2 at
14 3.) Further, the Court's August 1, 2017 order requiring Plaintiff to file an amended motion
15 expressly stated: "**Plaintiff is forewarned that the failure to show cause may result in the**
16 **imposition of sanctions, including the dismissal of this action for failure to obey a court order**
17 **and to prosecute.**" (ECF No. 3 at 2 (emphasis in original.) Thus, Movant had adequate warning
18 that dismissal would result from her noncompliance with the Court's order.

19 Accordingly, IT IS HEREBY RECOMMENDED that this matter be DISMISSED for
20 Movant's failure to file an amended motion and failure to respond to the order to show cause.

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

1 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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3 IT IS SO ORDERED.

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Dated: August 22, 2017



UNITED STATES MAGISTRATE JUDGE

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