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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 INGRAM TANZY, ) Case No.: 1:21-cv-1187 -NONE JLT  
12 Plaintiff, )  
13 v. ) FINDINGS AND RECOMMENDATIONS  
14 BAHRI YAYLACI and LONG ISLAND ) DISMISSING THE ACTION WITHOUT  
15 FREIGHT CORP., ) PREJUDICE FOR PLAINTIFF'S FAILURE TO  
16 Defendants ) COMPLY WITH THE COURT'S ORDERS AND  
FAILURE TO PROSECUTE

17 Ingram Tanzy was injured in a motor vehicle accident with a commercial truck and seeks to  
18 hold the defendants—including the truck driver and the owner of the truck—liable for negligence. (*See*  
19 *generally* Doc. 1) Because Plaintiff failed to prosecute this action and failed to comply with the  
20 Court's orders, it is recommended the action be **DISMISSED** without prejudice.

21 **I. Relevant Background**

22 Plaintiff initiated this action by filing a complaint on August 5, 2021. (Doc. 1) The following  
23 day, the Court issued a summons to Defendant and its New Case Documents. (Docs. 3, 4) In the  
24 order setting the mandatory scheduling conference for November 5, 2021, Plaintiff was informed:

25 The Court is unable to conduct a scheduling conference until defendants have been  
26 served with the summons and complaint. Accordingly, plaintiff(s) shall diligently  
27 pursue service of summons and complaint and dismiss those defendants against  
28 whom plaintiff(s) will not pursue claims. Plaintiff(s) shall promptly file proofs of  
service of the summons and complaint so the Court has a record of service. Counsel  
are referred to F.R.Civ.P., Rule 4 regarding the requirement of timely service of the  
complaint Failure to timely serve the summons and complaint may result in the  
imposition of sanctions, including the dismissal of unserved defendants.

1 (Doc. 4 at 1.) Nevertheless, Plaintiff failed to file a proof of service.

2 On October 21, 2021, the Court issued an order to Plaintiff to show cause why sanctions should  
3 not be imposed for the failure to prosecute this action and failure to comply with the Court's orders.  
4 (Doc. 5 at 1.) Plaintiff was informed that, as an alternative response to the order, a proof of service may  
5 be filed. (*Id.*) Any response to the order was due "[n]o later than November 5, 2021. (*Id.* at 1,  
6 emphasis omitted.) Finally, Plaintiff was advised the "[f]ailure to respond may result in the Court  
7 recommending dismissal of the action." (*Id.* at 2.) To date, Plaintiff has not responded to the Court's  
8 order or taken any other action to prosecute her claims.

## 9 **II. Failure to Prosecute and Obey the Court's Orders**

10 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: "Failure of counsel or of a  
11 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any  
12 and all sanctions . . . within the inherent power of the Court." LR 110. "District courts have inherent  
13 power to control their dockets," and in exercising that power, a court may impose sanctions including  
14 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.  
15 1986). A court may dismiss an action for a party's failure to prosecute an action or failure to obey a  
16 court order. *See, e.g. Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure  
17 to comply with an order to file an amended complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128,  
18 130 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779  
19 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

## 20 **III. Discussion and Analysis**

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

### 27 **A. Public interest and the Court's docket**

28 In the case at hand, the public's interest in expeditiously resolving this litigation and the Court's

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

#### 10 **B. Prejudice to Defendants**

11 To determine whether the defendants suffer prejudice, the Court must “examine whether the  
12 plaintiff’s actions impair the ... ability to go to trial or threaten to interfere with the rightful decision of  
13 the case.” *Malone*, 833 F.2d at 131 (citing *Rubin v. Belo Broadcasting Corp.*, 769 F.2d 611, 618 (9th  
14 Cir. 1985)). Significantly, a presumption of prejudiced arises when a plaintiff unreasonably delays the  
15 prosecution of an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). Here, Plaintiff  
16 has not taken any action to further prosecution of the action, despite being ordered by the Court to do  
17 so. Therefore, this factor weighs in favor of dismissal.

#### 18 **C. Consideration of less drastic sanctions**

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

26 The Court warned Plaintiff in the order setting the scheduling conference that “[f]ailure to  
27 timely serve the summons and complaint may result in the imposition of sanctions, including the  
28 dismissal of unserved defendants.” (Doc. 4 at 1.) As a result, Plaintiff was ordered to show cause why

1 sanctions should not be imposed, and again informed the failure to respond may result in dismissal  
2 (Doc. 5 at 1-2.) Importantly, the Court need only warn a party once that the matter could be dismissed  
3 for failure to comply to satisfy the requirements of Rule 41. *Ferdik*, 963 F.2d at 1262; *see also Titus v.*  
4 *Mercedes Benz of North America*, 695 F.2d 746, 749 n.6 (3rd Cir. 1982) (identifying a “warning” as an  
5 alternative sanction). Accordingly, the warnings to Plaintiff satisfied the requirement that the Court  
6 consider lesser sanctions, and this factor weighs in favor of dismissal of the action. *See Ferdik*, 963  
7 F.2d at 1262; *Henderson*, 779 F.2d at 1424; *Titus*, 695 F.2d at 749 n.6.

8 **D. Public policy**

9 Given Plaintiff’s failure to prosecute the action and failure to comply with the Court’s orders,  
10 the policy favoring disposition of cases on their merits is outweighed by the factors favoring dismissal.  
11 *See Malone*, 833 F.2d at 133, n.2 (explaining that although “the public policy favoring disposition of  
12 cases on their merits . . . weighs against dismissal, it is not sufficient to outweigh the other four  
13 factors”).

14 **IV. Findings and Recommendations**

15 Plaintiff failed to comply with the Court’s orders dated August 6, 2021 (Doc. 4) and October  
16 22, 2021 (Doc. 5), and thereby failed to prosecute this action.

17 According, the Court **RECOMMENDS**:

- 18 1. This action be **DISMISSED** without prejudice; and
- 19 2. The Clerk of Court be **DIRECTED** to close the action.

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

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

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5 IT IS SO ORDERED.

6 Dated: November 19, 2021

/s/ Jennifer L. Thurston  
7 CHIEF UNITED STATES MAGISTRATE JUDGE  
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