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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

KIMBERLY R. OLSON,
Plaintiff,

No. 2:15-CV-0646-MCE-CMK

vs.

FINDINGS AND RECOMMENDATIONS

HORNBROOK COMMUNITY
SERVICES DISTRICT, et al.,
Defendants.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is plaintiff's second amended complaint (Doc. 14).

Plaintiff's original complaint was dismissed for failure to comply with Federal Rule of Civil Procedure 8. Specifically, the original complaint consisted of 84 pages and incorporated 60 pages of background material by reference throughout. Plaintiff was provided an opportunity to amend, and cautioned that any amended complaint should be more limited in length. Plaintiff then filed her first amended complaint, which also failed to comply with Rule 8. The amended complaint consisted of 60 pages with reference to almost 200 pages of attached exhibits. Plaintiff's amended complaint was dismissed and she was instructed to file a second

1 amended complaint that was limited to 25 pages. Plaintiff was cautioned that failure to comply
2 could result in dismissal of her action. See Local Rule 110. Plaintiff's second amended
3 complaint, which is 46 pages in length, fails to comply with the court's prior order.

4 The court must weigh five factors before imposing the harsh sanction of
5 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.
6 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's
7 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket;
8 (3) the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on
9 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,
10 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an
11 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.
12 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is
13 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,
14 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to
15 follow local rules, see Ghazali, 46 F.3d at 53, and for failure to comply with an order to file an
16 amended complaint, see Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992).

17 Having considered these factors, the court finds that dismissal is warranted as an
18 appropriate sanction. Specifically, absent an operative pleading that complies with Rule 8,
19 defendants are incapable of being on notice of the nature of plaintiff's claims and their alleged
20 conduct. This prejudices the defendants and thwarts the public's interest in expeditious
21 resolution of cases on the merits. Given the court's repeated warnings to plaintiff regarding
22 compliance with Rule 8 and plaintiff's repeated refusal to heed those warning, it does not appear
23 that a less drastic sanction is available.

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1 Based on the foregoing, the undersigned recommends that this action be
2 dismissed, without prejudice, for failure to comply with court orders and Federal Rule of Civil
3 Procedure 8.

4 These findings and recommendations are submitted to the United States District
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
6 after being served with these findings and recommendations, any party may file written
7 objections with the court. Responses to objections shall be filed within 14 days after service of
8 objections. Failure to file objections within the specified time may waive the right to appeal.
9 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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11 DATED: August 31, 2018

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13 **CRAIG M. KELLISON**
14 UNITED STATES MAGISTRATE JUDGE
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