

1 together in the interim and submit a joint report. *Id.* Morales was instructed to disclose his
2 medical records and submit his responses to Omni's outstanding discovery requests by January
3 30, 2018. *Id.*

4 The court held a second scheduling conference on January 30, 2018. (Doc. 26) Counsel
5 for Omni appeared telephonically; Morales did not appear. (Doc. 26) Morales did not respond
6 to Omni's invitations to participate in preparing a joint report prior to the conference. (Doc. 28,
7 p. 2) He did not comply with the court's orders regarding discovery. (Doc. 28, p. 2) He has
8 not contacted chambers to explain his absence.

9 On February 1, 2018, this court issued an order to show cause why this action should not
10 be dismissed for failure to prosecute or for failure to comply with this court's orders. (Doc. 27)
11 The court warned Morales that if he failed to file a timely response, the action could be
12 dismissed without further notice. *Id.* Morales did not file a timely response. *Id.*

13 14 Discussion

15 Rule 41(b) reads in pertinent part as follows:

16 If the plaintiff fails to prosecute or to comply with these rules or a court order, a
17 defendant may move to dismiss the action or any claim against it.

18 Fed.R.Civ.P. *See also Link v. Wabash R. Co.*, 370 U.S. 626, 630, 82 S. Ct. 1386, 1389 (1962)
19 (The court may dismiss an action pursuant to Rule 41(b) *sua sponte*.).

20 In this case, the plaintiff has not complied with the court's orders to appear at a
21 scheduling conference, file a joint report, provide discovery, or file a response to the court's
22 order to show cause. Accordingly, this court may dismiss the case pursuant to Fed.R.Civ.P.
23 41(b). *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1991).

24 Before dismissing an action, however, the court is required to weigh several factors: "(1)
25 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
26 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
27 cases on their merits; and (5) the availability of less drastic sanctions." *Ghazali v. Moran*, 46

1 F.3d 52, 53 (9th Cir.1995). “The first two of these factors favor the imposition of sanctions in
2 most cases, while the fourth cuts against a default or dismissal sanction.” *Aguado v. First*
3 *Magnus Fin. Corp.*, 2009 WL 4058173, at *1 (D. Ariz. 2009). “Thus the key factors are
4 prejudice and availability of lesser sanctions.” *Id.*


5 Upon balancing the factors, the court finds that the action should be dismissed. The
6 plaintiff does not appear interested in moving this case forward. In fact, he seems to be engaged
7 in a continuing pattern of ignoring this court’s orders. The defendant notes that Morales has a
8 history of trespassing on its hotel property both before and after the alleged incident. (Doc. 28-
9 1, p. 3) The defendant has doubts as to whether the pending suit was filed in good faith.
10 Accordingly, the court finds it unlikely that less drastic sanctions would suffice.

11
12 RECOMMENDATION

13 For the foregoing reasons, the Magistrate Judge recommends that the District Court, after
14 its independent review, dismiss this action for failure to prosecute or failure to comply with this
15 court’s orders pursuant to Fed.R.Civ.P. 41(b). Omni’s outstanding motion to dismiss should
16 be dismissed as moot. (Doc. 28)

17 Pursuant to 28 U.S.C. § 636(b)(1), any party may file and serve written objections within
18 14 days after being served with a copy of this report and recommendation. If objections are not
19 timely filed, they may be waived. The Local Rules permit a response to an objection. Reply
20 briefs are not permitted absent permission from the District Court.

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22 DATED this 20th day of February, 2018.

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25 Leslie A. Bowman
26 United States Magistrate Judge
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