



1 March 16, 2011, order directing Plaintiff to notify the Court of his intention to proceed, Plaintiff  
2 was warned that his failure to respond would result in dismissal. The April 6, 2011, order to  
3 show cause cautioned Plaintiff that his failure to respond would result in dismissal of this action  
4 with prejudice. More than ten days have passed, and Plaintiff has not filed a response to the  
5 order to show cause.<sup>1</sup>

6 “A scheduling order is not a frivolous piece of paper, idly entered . . . .” Johnson v.  
7 Mammoth Recreations, Incl, 975 F.2d 604, 610 (9<sup>th</sup> Cir. 1992)(internal quotation marks and  
8 citation omitted). Parties are required to exercise due diligence, Zivkovic v. Southern California  
9 Edison Co., 302 F.3d 1080, 1087 (9<sup>th</sup> Cir. 2002)(citing Johnson, 975 F.2d at 609), and the Court  
10 finds that Plaintiff’s failure to file a pretrial statement and failure to respond to the order to show  
11 cause warrant the imposition of sanctions.

12 The Court has the inherent power to control its docket and may, in the exercise of that  
13 power, impose sanctions where appropriate, including dismissal of this action. Bautista v. Los  
14 Angeles County, 216 F.3d 837, 841 (9<sup>th</sup> Cir. 2000). In determining whether to dismiss an action  
15 for failure to comply with an order, the Court must weigh “(1) the public’s interest in expeditious  
16 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the  
17 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the  
18 availability of less drastic sanctions.” In re Phenylpropanolamine (PPA) Products Liability  
19 Litigation, 460 F.3d 1217, 1226 (9<sup>th</sup> Cir. 2006)(internal quotations and citations omitted). These  
20 factors guide a court in deciding what to do and are not conditions that must be met in order for a  
21 court to take action. In re PPA, 460 F.3d at 1226 (citation omitted).

22 The expeditious resolution of litigation and the Court’s need to manage its own docket  
23 weigh in favor of dismissal. See id. at 1227. Plaintiff had ample time to respond to the order  
24 directing him to inform the Court of his intention to proceed and to the order to show cause. The  
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26 <sup>1</sup>Because Plaintiff is no longer incarcerated, what is commonly referred to as the prison mailbox rule does  
27 not apply. Caldwell v. Amend, 30 F.3d 1199, 1202 (9<sup>th</sup> Cir. 1994); Houston v. Lack, 487 U.S. 266, 270 (1988).

1 Court has an enormous caseload, and when litigants disregard orders of the court and deadlines,  
2 the Court's ability to manage its docket and guide cases toward resolution is significantly  
3 compromised. See id.

4 As for the risk of prejudice to Defendants, there is no identifiable prejudice in this  
5 instance. See id. At 1227-28. Regarding the fourth factor, while public policy favors disposition  
6 on the merits and weights against dismissal, it is Plaintiff's own conduct which is at issue here  
7 and which has stalled this case. See id. at 1228. Finally, there are no alternative sanctions which  
8 are satisfactory. Monetary sanctions are not available given that Plaintiff is proceeding in forma  
9 pauperis. In sum, the Court finds dismissal is warranted given Plaintiff's failure to respond to an  
10 order specifically directed at his intention to proceed, and the unavailability of satisfactory  
11 alternative sanctions. See id. At 1228-29.

12 Accordingly, IT IS HEREBY ORDERED that this action is dismissed, with prejudice,  
13 based on Plaintiff's failure to respond to the March 16, 2011, order and the April 6, 2011, order  
14 to show cause. The Clerk is directed to close this case.

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17 IT IS SO ORDERED.

18 **Dated:** April 20, 2011

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE