

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

11 NATHAN CHARLES,

CASE NO. 1:09-cv-1873 SKO

12 v. Plaintiff pro se,

**ORDER DISCHARGING ORDER TO SHOW
CAUSE AND DISMISSING ACTION FOR
FAILURE TO PROSECUTE AND FOR
FAILURE TO COMPLY WITH COURT
ORDER**13 v.
14 MICHAEL J. ASTRUE,
15 Commissioner of Social Security,

16 Defendant.

17 /
18 **BACKGROUND**19 On October 26, 2009, Plaintiff, proceeding pro se and in forma pauperis, filed a complaint
20 under 42 U.S.C. §§ 405(g) and 1383(c)(3) seeking review of a final decision of the Commissioner
21 of Social Security (the "Commissioner" or "Defendant") denying Plaintiff's applications for disability
22 insurance benefits and Supplemental Security Income. (Doc. 1.) The parties have consented to the
23 jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1), and the matter
24 has been assigned to the Magistrate Judge to conduct all further proceedings in this case, including
25 entry of final judgment. (Docs. 13, 15, 17.)26 On November 10, 2009, the Court issued a scheduling order directing (1) Plaintiff to serve
27 upon Defendant a letter brief within thirty (30) days after service of the administrative record,
28 (2) Defendant to serve a response to Plaintiff's letter brief within thirty-five (35) days thereafter,

1 (3) the parties to file any stipulation to a remand within fifteen (15) days after Defendant's response,
2 and (4) Plaintiff to file and serve an opening brief within thirty (30) days of Defendant's response
3 if Defendant did not agree to a remand to the Commissioner. (Doc. 9 ¶¶ 3-6.) The scheduling order
4 further stated that "[v]iolations of this order or of the federal or local rules of procedure may result
5 in sanctions pursuant to Local Rule [110]." (*Id.* ¶ 15.) An informational order for pro se litigants
6 issued on March 10, 2010, also expressly warned Plaintiff that failure to comply with the local rules,
7 federal rules, or a court order, including the informational order itself, would be grounds for
8 dismissal or other appropriate sanctions. (Doc. 16 at 8.)

9 On May 17, 2010, Defendant served and lodged the administrative record. (Doc. 18.)
10 Plaintiff did not file an opening brief within the Court's prescribed time period, and the parties did
11 not stipulate to an extension of time for Plaintiff to do so. Accordingly, the Court ordered Plaintiff,
12 by September 24, 2010, either to file his opening brief or to show cause why the Court should not
13 impose sanctions, including dismissal, for Plaintiff's failure to do so. (Doc. 19 at 2.) The order to
14 show cause admonished Plaintiff that "failure to timely comply with this order will result in
15 dismissal of this action." (*Id.*) Plaintiff has not filed his opening brief or otherwise responded to the
16 order to show cause.

17 **DISCUSSION**

18 **A. Legal Standard**

19 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these Rules
20 or with any order of the Court may be grounds for imposition by the Court of any and all sanctions
21 authorized by statute or Rule or within the inherent power of the Court." A court may dismiss an
22 action, with prejudice, because of a party's failure to prosecute an action, failure to obey a court
23 order, or failure to comply with local rules. *See, e.g., Hells Canyon Pres. Council v. U.S. Forest*
24 *Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that a court may dismiss an action pursuant
25 to Federal Rule of Civil Procedure 41(b) *sua sponte* for a plaintiff's failure to prosecute or comply
26 with the rules of civil procedure or the court's orders); *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir.
27 1995) (per curiam) ("Failure to follow a district court's local rules is a proper ground for dismissal.").

1 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
2 order, or failure to comply with local rules, the Court must consider the following factors: (1) the
3 public's interest in expeditious resolution of litigation, (2) the Court's need to manage its docket,
4 (3) the risk of prejudice to the defendants, (4) the public policy favoring disposition of cases on their
5 merits, and (5) the availability of less drastic sanctions. *Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084
6 (9th Cir. 2010); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir.
7 2006); *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). "Where a court order is violated,
8 the first two factors support sanctions and the fourth factor cuts against a default. Therefore, it is the
9 third and fifth factors that are decisive." *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1412 (9th
10 Cir. 1990).

11 **B. Analysis**

12 **1. The Public's Interest in Expeditious Resolution of Litigation**

13 "[T]he public has an overriding interest in securing 'the just, speedy, and inexpensive
14 determination of every action.'" *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d at
15 1227 (quoting Fed. R. Civ. P. 1). "Orderly and expeditious resolution of disputes is of great
16 importance to the rule of law. By the same token, delay in reaching the merits, whether by way of
17 settlement or adjudication, is costly in money, memory, manageability, and confidence in the
18 process." *Id.* "The public's interest in expeditious resolution of litigation always favors dismissal."
19 *Pagtalunan*, 291 F.3d at 642. Accordingly, Plaintiff's failure to comply with the Court's order and
20 to pursue his case further weighs in favor of dismissal.

21 **2. The Court's Need to Manage Its Docket**

22 As for the second factor, district courts retain broad discretion to control their dockets, and
23 in the exercise of that power they may impose sanctions including, where appropriate, dismissal.
24 *Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007). The Court "is in the best
25 position to determine whether the delay in a particular case interferes with docket management and
26 the public interest." *Pagtalunan*, 291 F.3d at 642.

27 Here, this case "has consumed some of the court's time that could have been devoted to other
28 cases on the docket. It is incumbent upon the Court to manage its docket without being subject to

1 routine noncompliance of litigants such as [Plaintiff]. Accordingly, this factor also weighs in favor
2 of dismissal." *Id.* (citation omitted).

3 **3. The Risk of Prejudice to Defendant**

4 The third factor – the risk of prejudice to Defendant – also weighs in favor of dismissal. "A
5 defendant suffers prejudice if the plaintiff's actions impair the defendant's ability to go to trial or
6 threaten to interfere with the rightful decision of the case." *Adriana Int'l Corp.*, 913 F.2d at 1412.
7 Failing to produce documents as ordered, for example, is considered sufficient prejudice. *Id.*
8 Prejudice "may also consist of costs or burdens of litigation, although it may not consist of the mere
9 pendency of the lawsuit itself." *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d at
10 1228. "The law also presumes prejudice from unreasonable delay." *Id.* at 1227. A plaintiff "may
11 proffer an excuse for delay that, if 'anything but frivolous,' shifts the burden of production to the
12 defendant to show at least some actual prejudice." *Id.* at 1228. If the defendant does so, "the
13 plaintiff must persuade the court that the claims of prejudice are illusory or relatively insignificant
14 in light of his excuse." *Id.*

15 In this case, Plaintiff has failed to offer any explanation for the delay in proceeding with the
16 prosecution of the case. The Court finds that, under the circumstances of this case, Plaintiff's delay
17 is unreasonable. Moreover, Plaintiff's failure to file an opening brief threatens to interfere with the
18 rightful decision of this case, further establishing prejudice to Defendant.

19 **4. The Public Policy Favoring Disposition of Cases on Their Merits**

20 The fourth factor – the public policy favoring disposition of cases on their merits – strongly
21 counsels against dismissal. *Id.* "At the same time, a case that is stalled or unreasonably delayed by
22 a party's failure to comply with deadlines and discovery obligations cannot move forward toward
23 resolution on the merits." *Id.* Thus, the Ninth Circuit has "also recognized that this factor 'lends
24 little support' to a party whose responsibility it is to move a case toward disposition on the merits but
25 whose conduct impedes progress in that direction." *Id.* Therefore, the fourth factor is greatly
26 outweighed by the factors in favor of dismissal discussed herein.

5. The Availability of Less Drastic Sanctions

Finally, a court's warning to a party that failure to obey the court's order may result in dismissal satisfies the "consideration of alternatives" requirement. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). The Court's informational order issued on March 10, 2010, expressly warned Plaintiff that failure to comply with the local rules, federal rules, or a court order, including the informational order itself, would be grounds for dismissal or other appropriate sanctions. (Doc. 16 at 8.) The Court further admonished Plaintiff that failure to respond to the Court's order to show cause would result in dismissal of this case. (Doc. 19 at 2.) Because Plaintiff is proceeding pro se and in forma pauperis, the Court concludes that monetary sanctions are not a viable alternative. The Court finds that, under the circumstances of the present case, there is no alternative to dismissal.

11 || C. Conclusion

12 The Court's consideration of the five factors discussed above favors dismissal of this case.
13 Accordingly, IT IS HEREBY ORDERED that the Order to Show Cause be DISCHARGED. IT IS
14 FURTHER ORDERED that this action be DISMISSED WITH PREJUDICE for failure to prosecute
15 and for failure to follow an order of the Court. The Clerk is DIRECTED to CLOSE this action in
16 its entirety.

18 IT IS SO ORDERED.

19 Dated: September 28, 2010 _____ /s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE