



1 deadline has lapsed and Plaintiff has neither complied with the Second Scheduling Order, or with  
2 the July 12, 2017, order to show cause.

3 Local Rule 110 provides that “failure of counsel or of a party to comply with these Rules  
4 or with any order of the Court may be grounds for the imposition by the Court of any and all  
5 sanctions . . . within the inherent power of the Court.” District courts have the inherent power to  
6 control their dockets and “in the exercise of that power, they may impose sanctions including,  
7 where appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th  
8 Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute  
9 an action, failure to obey a court order, or failure to comply with local rules. *See, e.g. Ghazali v.*  
10 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v.*  
11 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order  
12 requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
13 (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised  
14 of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for  
15 failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)  
16 (dismissal for failure to lack of prosecution and failure to comply with local rules).

17 In determining whether to dismiss an action for lack of prosecution, failure to obey a court  
18 order, or failure to comply with local rules, the Court must consider several factors: (1) the  
19 public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;  
20 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on  
21 their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831;  
22 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*,  
23 46 F.3d at 53.

24 The Court finds that the public’s interest in expeditiously resolving this litigation and the  
25 Court’s interest in managing the docket weigh in favor of dismissal. The third factor, risk of  
26 prejudice to Defendants, also weighs in favor of dismissal, since a presumption of injury arises  
27 from the occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542  
28 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on

1 their merits -- is greatly outweighed by the factors in favor of dismissal discussed herein,  
2 particularly since this case is now over seven years old. Finally, a Court's warning to a party that  
3 his failure to obey the court's order will result in dismissal satisfies the "consideration of  
4 alternatives" requirement. *Ferdik v. Bonzelet*, 963 F.2d at 1262; *Malone*, 833 at 132-33;  
5 *Henderson*, 779 F.2d at 1424. The Second Scheduling Order clearly stated: "**Failure to comply**  
6 **with the provisions of this Order or the Local Rules may result in the imposition of**  
7 **sanctions up to and including dismissal of the action, or entry of default.**" (Doc. 138, p. 2  
8 (emphasis in original).) Further, the order to show cause which issued on July 12, 2017,  
9 cautioned that this action may be dismissed for Plaintiff's failure to comply with the Second  
10 Scheduling Order and gave Plaintiff opportunity to file his pretrial statement, a statement  
11 explaining his delay, or a voluntary dismissal. (Doc. 141.) Thus, Plaintiff had adequate warning  
12 that dismissal may result from his noncompliance with the Court's orders.

13 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed with  
14 prejudice based on Plaintiff's failure to obey the Second Scheduling Order (Doc. 138).

15 These Findings and Recommendations will be submitted to the United States District  
16 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within**  
17 **fourteen (14) days** after being served with these Findings and Recommendations, the parties may  
18 file written objections with the Court. The document should be captioned "Objections to  
19 Magistrate Judge's Findings and Recommendations." Failure to file objections within the  
20 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,  
21 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22 IT IS SO ORDERED.

23  
24 Dated: August 8, 2017

/s/ Sheila K. Olerto  
UNITED STATES MAGISTRATE JUDGE