

1 952, 957 (9th Cir.1988); Klinge v. Eikenberry, 849 F.2d 409, 411–12 (9th Cir.1988). (ECF No. 24-
2 7.) Plaintiff’s opposition was due within twenty-one (21) days of service of Defendants’ motion, but
3 he filed no response.

4 On February 26, 2016, the Court ordered Plaintiff to file an opposition to Defendant’s motion
5 within thirty (30) days of service of that order. (ECF No. 26). Plaintiff was warned that “the failure to
6 comply with this order will result in dismissal of this action, with prejudice, for failure to prosecute
7 and failure to obey a court order.” (Id. at 2.) Plaintiff has failed to submit any opposition and has not
8 otherwise communicated with the Court. As of the date of this order, Plaintiff’s response to
9 Defendants’ motion for summary judgment is more than two months overdue.

10 **II. Discussion**

11 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with any
12 order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the
13 inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n
14 the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal.”
15 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
16 prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to
17 comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for
18 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
19 for failure to comply with an order requiring amendment of complaint); Malone v. U.S. Postal Service,
20 833 F.2d 128, 130-33 (9th Cir. 1987) (dismissal for failure to comply with court order).

21 In determining whether to dismiss an action, the Court must consider several factors: (1) the
22 public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3)
23 the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
24 merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423
25 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988).

26 Here, the action has been pending for more than two years, and Plaintiff has been served with
27 Defendants’ motion for summary judgment for more than three months without any response or
28 opposition. Plaintiff is obligated to comply with the Local Rules and was informed by Defendants of

1 the need to oppose a motion for summary judgment. Despite Plaintiff's duty to comply with all
2 applicable rules and Defendants' notice, Plaintiff did not file a timely opposition. Plaintiff remained
3 incommunicative after being issued another order by this Court to respond to the pending motion. The
4 Court cannot effectively manage its docket if a party ceases litigating the case. Thus, both the first and
5 second factors weigh in favor of dismissal.

6 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
7 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
8 Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). Because public policy favors disposition on
9 the merits, the fourth factor usually weighs against dismissal. Pagtalunan v. Galaza, 291 F.3d 639, 643
10 (9th Cir. 2002). However, "this factor lends little support to a party whose responsibility it is to move
11 a case toward disposition on the merits but whose conduct impedes progress in that direction," which
12 is the case here. In re PPA, 460 F.3d at 1228.

13 Finally, the court's warning to a party that failure to obey the court's order will result in
14 dismissal satisfies the "considerations of the alternatives" requirement. Ferdik, 963 F.2d at 1262;
15 Malone, 833 at 132-133; Henderson, 779 F.2d at 1424. The Court's February 26, 2016 order requiring
16 Plaintiff to respond to Defendant's motion for summary judgment expressly warned him that he failure
17 to comply with that order would result in dismissal of this action, with prejudice, for failure to
18 prosecute and failure to obey a court order. (ECF No. 26, p. 2.) Thus, Plaintiff had adequate warning
19 that dismissal could result from his noncompliance. Also, at this stage in the proceedings there is little
20 available to the Court which would constitute a satisfactory lesser sanction while protecting the Court
21 from further unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis
22 in this action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is
23 likely to have no effect given that Plaintiff has ceased litigating his case.

24 In summary, Plaintiff filed this action but is no longer prosecuting it. The Court cannot afford
25 to expend resources resolving unopposed dispositive motions in a case which Plaintiff is no longer
26 prosecuting.

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1 **III. Conclusion and Recommendation**

2 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY
3 RECOMMENDS that this action be dismissed, with prejudice, for failure to prosecute and for failure
4 to obey a court order.

5 These Findings and Recommendations will be submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**
7 after being served with these Findings and Recommendations, the parties may file written objections
8 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and
9 Recommendations.” The parties are advised that failure to file objections within the specified time
10 may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal.
11 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391,
12 1394 (9th Cir. 1991)).

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14 IT IS SO ORDERED.

15 Dated: April 6, 2016

16 /s/ Barbara A. McAuliffe
17 UNITED STATES MAGISTRATE JUDGE
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