

1 received multiple abstracts of judgment, a writ of garnishment, and a writ of execution. (ECF
2 Nos. 3-17.) However, between May 2014 and September 2018, no action occurred in the case.

3 **A. First Order to Show Cause**

4 On October 31, 2018, Plaintiff filed a motion to amend the foreign judgment to add an
5 additional judgment debtor. (ECF No. 23.) On November 2, 2018, the Court issued an order to
6 show cause (“OSC”), requiring Plaintiff to show cause why its motion should not be denied based
7 on lack of jurisdiction to grant the requested relief (ECF No. 24). Plaintiff filed a timely response
8 to this OSC (ECF No. 25) and subsequently withdrew the motion to amend (*see* ECF No. 33).

9 On August 20, 2019, Plaintiff filed an application for an order requiring an individual
10 named William F. Williams to appear for a debtor’s examination (ECF No. 34) and on August 21,
11 2019, Plaintiff filed a notice to compel attendance of Mr. Williams at a debtor’s examination
12 (ECF No. 35). These filings stated that Mr. Williams was a judgment debtor (*ibid.*). However,
13 Mr. Williams is not listed as a defendant on the foreign judgment registered by Plaintiff (*see* ECF
14 No. 1). Moreover, although Plaintiff represented in the application that Mr. Williams was an
15 “agent/officer/PMK” of judgment debtor Aeroplate Corp. (“Aeroplate”), Plaintiff did not provide
16 sufficient information for the Court to determine Mr. William’s relationship to Aeroplate and
17 whether Mr. Williams is subject to a debtor examination on behalf of Aeroplate (*see* ECF No.
18 37). Thus, the Court denied without prejudice the application for an order requiring Mr. Williams
19 to appear for examination and struck Plaintiff’s notice to compel the attendance of Mr. Williams
20 at a debtor examination (ECF No. 37).

21 **B. Second Order to Show Cause**

22 On August 21, 2019, Plaintiff also filed an application for an order requiring judgment
23 debtor Aeroplate to appear for, and bring certain documents to, a judgment debtor examination
24 (ECF No. 36). The Court granted the application and entered an order on August 28, 2019,
25 requiring Aeroplate to appear for a judgment debtor examination on September 27, 2019, and to
26 bring the requested documents (ECF No. 38).

27 On September 18, 2019, Aeroplate filed objections to the scope of the documents it was
28 required to bring to the examination (ECF No. 41). Plaintiff subsequently contacted the Court by

1 email and requested that the examination be continued to allow both Plaintiff and Aeroplate
2 additional time to prepare (ECF No. 40). The Court granted the informal request and continued
3 the hearing to November 15, 2019. (*Id.*) The Court also directed Plaintiff to file, no later than
4 October 4, 2019, a response to Aeroplate’s objections (ECF No. 42).

5 On October 4, 2019, Plaintiff again contacted the Court by email and requested that the
6 deadline for Plaintiff to file its response to Aeroplate’s objections be extended to October 31,
7 2019. Plaintiff represented to the Court that the extension of time was needed to allow Plaintiff to
8 review the voluminous documents Aeroplate had provided and continued to provide to Plaintiff,
9 and also because the parties were meeting and conferring in an effort to settle the matter, which
10 would render a judgment debtor examination unnecessary (ECF No. 43). The Court granted the
11 informal request, and extended to October 31, 2019, the deadline for Plaintiff to file its response
12 to Aeroplate’s objections. (*Id.*) The October 31, 2019, deadline passed, and Plaintiff failed to file
13 a response to Aeroplate’s objections as ordered by the Court.

14 On November 5, 2019, the Court vacated the judgment debtor examination that was set
15 for November 15, 2019, and ordered Plaintiff to file, no later than November 8, 2019, its response
16 to Aeroplate’s objections or a notice that the case had settled (ECF No. 44). The November 8,
17 2019, deadline passed, and Plaintiff failed to file either a response to Aeroplate’s objections or
18 notice that the case had settled as required by the Court’s order.

19 On November 13, 2019, the Court issued its second OSC in this case. The OSC required
20 Plaintiff to file a written response no later than November 20, 2019, showing cause why
21 sanctions, up to and including dismissal of this case, should not be issued for Plaintiff’s failure to
22 comply with the Court’s orders and failure to prosecute this case (ECF No. 45). The Court
23 cautioned Plaintiff that failure to respond to the OSC “may result in the dismissal of this case.”
24 (*Id.* at 2.)

25 On November 14, 2019, Plaintiff emailed a letter to the Court’s courtroom deputy, but did
26 not file a response to the OSC as directed by the Court. The Court, however, interpreted
27 Plaintiff’s emailed letter as a response to the OSC and directed the Clerk of the Court to file that
28 response. (ECF Nos. 46, 47.) In the letter, Plaintiff stated the following:

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Dear Judge Grosjean:

This responds to the Order To Show Cause issued on November 13, 2019. No response to the objections asserted by Aeroplate was provided because the parties have been in settlement negotiations and had agreed to an open ended extension of time to respond while final details were hammered out.

Please be advised that a settlement has been reached. We are working on the paperwork. The settlement contemplates a payment plan. The judgment will not be deemed satisfied until payment, in good and sufficient funds, is received in full.

I apologize to the court for any inconvenience caused and ask that this case remain open until the judgment is deemed satisfied. We will then file appropriate documents with the court confirming satisfaction of the judgment. Please let me know if you need anything further, and thank you for your attention to this matter.

(ECF No. 46, Letter from Horner Law Group dated November 14, 2019.)

The Court found that Plaintiff’s explanation failed to adequately justify its failure to comply with the Court’s order. Nonetheless, the Court discharged the second OSC and, although the Court declined to impose sanctions, it “caution[ed] Plaintiff that any further violations of the Court’s orders, or failures to comply with Court procedures and rules, will be met with less tolerance and could result in the imposition of sanctions, including the dismissal of this case.” (ECF No. 47 at 1-2; *see id.* at 4-5.) The Court directed the parties to file, no later than December 31, 2019, either (a) a notice of settlement; (b) a response to Aeroplate’s objections; or (c) a request to withdraw the application for a judgment debtor examination of Aeroplate. (ECF No. 47 at 5.)

C. Third Order to Show Cause

On December 30, 2019, Plaintiff filed a notice of conditional settlement and request that all deadlines governing the case be vacated. (ECF No. 48.) On December 31, 2019, the Court issued a minute order vacating all pending hearings and deadlines and directed the parties to file dispositional documents no later than January 31, 2020. (ECF No. 49.) On January 31, 2020, Plaintiff filed an *unsigned* acknowledgement of satisfaction of judgment. (ECF No. 50.)

On February 4, 2020, the Court issued a minute order (ECF No. 51) informing the parties that the unsigned acknowledgment of satisfaction of judgment filed by Plaintiff was insufficient, and did not comply with the Court’s December 31, 2019, order directing the parties to file appropriate dispositional documents no later than January 31, 2020 (ECF No. 49). The Court

1 directed the parties to file, no later than February 10, 2020, a notice of voluntary dismissal or a
2 stipulation for dismissal under Fed. R. Civ. P. 41(a)(1)(A) if the case was fully resolved, or a joint
3 status report if the case was not fully resolved (ECF No. 51).

4 The February 10, 2020, deadline passed, and Plaintiff failed to file a notice of voluntary
5 dismissal, a stipulation for dismissal, or a joint status report as required by the Court's
6 February 4, 2020, order. Thus, on February 20, 2020, the Court issued its third OSC in this case
7 (ECF No. 52). The third OSC required Plaintiff to file a written response, no later than February
8 27, 2020, explaining its failure to comply with the Court's February 4, 2020, order requiring the
9 filing of a notice of voluntary dismissal, stipulation for dismissal, or joint status report, and
10 indicating whether it intends to prosecute this action (*id.*). Plaintiff was cautioned that failure to
11 respond to the OSC may result in the imposition of sanctions, up to and including the dismissal of
12 this case (*id.*). Plaintiff has not filed a response to the OSC issued February 20, 2020, and thus has
13 yet again failed to comply with the Court's orders.

14 **II. RECOMMENDATION FOR IMPOSITION OF SANCTIONS**

15 The Federal Rules of Civil Procedure are to "be construed, administered, and employed by
16 the court and the parties to secure the just, speedy, and inexpensive determination of every action
17 and proceeding." Fed. R. Civ. P. 1. In order to effectuate this purpose, the Rules provide for the
18 imposition of sanctions against parties who fail to comply with court orders or that unnecessarily
19 multiply the proceedings. *See, e.g.,* Fed. R. Civ. P. 16(f); Fed. R. Civ. P. 37(b). Under Federal
20 Rule of Procedure 16(f), a court may issue any just order "if a party or its attorney . . . fails to
21 obey a scheduling or other pretrial order." Fed. R. Civ. P. 16(f)(1)(C).

22 A court also possesses inherent authority to impose sanctions to manage its own affairs so
23 as to achieve the orderly and expeditious disposition of cases. *Chambers v. NASCO, Inc.*, 501
24 U.S. 32, 43 (1991). A court's inherent power is that which is necessary to the exercise of all
25 others, including to protect the due and orderly administration of justice and maintain the
26 authority and dignity of the court. *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 764 (1980).

27 The Local Rules provide additional authority for a court's imposition of sanctions. Local
28 Rule 110 provides: "Failure of counsel or of a party to comply with these Rules or with any order

1 of the Court may be grounds for imposition by the Court of any and all sanctions authorized by
2 statute or Rule or within the inherent power of the Court.” L.R. 110. In addition, Local Rule
3 184(a) provides:

4 In the event any attorney subject to these Rules engages in conduct that may warrant
5 discipline or other sanctions, any Judge or Magistrate Judge may initiate proceedings for
6 contempt under 18 U.S.C. § 401 or Fed. R. Crim. P. 42, or may, after reasonable notice
7 and opportunity to show cause to the contrary, taken any other appropriate disciplinary
8 action against the attorney. In addition to or in lieu of the foregoing, the Judge or
9 Magistrate Judge may refer the matter to the disciplinary body of any Court before which
10 the attorney has been admitted to practice.

11 L.R. 184(a).

12 **A. Imposition of Monetary Sanctions**

13 To coerce a party to comply with the court’s orders, the court may issue sanctions for
14 every day the party fails to respond to the court’s orders to show cause. *See Lasar v. Ford Motor*
15 *Co.*, 399 F.3d 1101, 1110 (9th Cir. 2005) (a court has authority to impose civil sanctions that are
16 “intended to be remedial by coercing the [party] to do what he had refused to do”).

17 Here, Plaintiff has shown a complete disregard of and lack of respect for the Court’s
18 orders. Plaintiff has repeatedly violated the Court’s orders, and its conduct has resulted in the
19 Court issuing a second and third OSC in this case. In discharging the second OSC, the Court
20 found that Plaintiff provided an inadequate justification for violating the Court’s previous orders,
21 reminded Plaintiff and its counsel of the duty to comply with all Court orders. The Court also
22 cautioned Plaintiff that while the Court was being flexible about the violations at issue in the
23 second OSC, and was declining to impose sanctions at that time, any future violations of the
24 Court’s orders “will be met with less tolerance and could result in the imposition of sanctions
25 including dismissal of this action.” Despite these warnings, Plaintiff again violated the Court’s
26 orders, prompting the Court to issue a third OSC, to which Plaintiff has failed to respond.

27 Given the seriousness of Plaintiff’s complete disregard and lack of respect for the Court’s
28 previous orders, and Plaintiff’s failure to respond to the Court’s third OSC, it appears that
imposition of sanctions may be appropriate to compel Plaintiff to respond and comply with the
third OSC. However, the Court leaves the imposition of such sanctions to the discretion of the
district judge assigned to this case.

1 **B. Imposition of Sanction of Dismissal for Failure to Prosecute and Comply with**
2 **the Court's Orders**

3 Alternatively, if the district judge declines to impose monetary sanctions to compel
4 Plaintiff's compliance with the third OSC, the Court recommends that this action be dismissed for
5 Plaintiff's failure to prosecute and comply with the Court's orders.

6 “In determining whether to dismiss [an action] for failure to prosecute or failure to comply
7 with a court order, the Court must weigh the following factors: (1) the public's interest in
8 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
9 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
10 public policy favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639,
11 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

12 ““The public's interest in expeditious resolution of litigation always favors dismissal.”” *Id.*
13 (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). Thus, this factor
14 weighs in favor of dismissal.

15 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
16 and of itself to warrant dismissal.” *Id.* at 642 (citing *Yourish*, 191 F.3d at 991). However, “delay
17 inherently increases the risk that witnesses' memories will fade and evidence will become stale,”
18 *id.* at 643, and it is Plaintiff's failure to prosecute this action, which has been pending since 2013,
19 and failure to comply with the Court's orders, that is causing delay. The case is now stalled until
20 Plaintiff files a notice of voluntary dismissal, a stipulation for dismissal, or informs the Court
21 what, if anything, remains to be addressed in the case.¹ Therefore, the third factor weighs in favor
22 of dismissal.

23 As to the availability of lesser sanctions, at this stage in the proceedings there is little
24 available to the Court, other than the monetary sanctions discussed above, that would constitute a
25 satisfactory alternative and potentially lesser sanction while protecting the Court from further
26 unnecessary expenditure of its scarce resources. Further, the preclusion of evidence or witnesses

27 ¹ As noted previously, Plaintiff filed an unsigned acknowledgement of satisfaction of judgment (ECF No. 50). This
28 unsigned document is insufficient to comply with the Court's order requiring Plaintiff to file dispositional documents
 (ECF Nos. 59, 51, 52), and is also insufficient to trigger dismissal of this action.

1 is not available given the stage of this proceeding.

2 Finally, because public policy favors disposition on the merits, this factor weighs against
3 dismissal. *Id.*

4 Based on a weighing of the factors, if the district judge declines to impose monetary
5 sanctions, dismissal with prejudice may be an appropriate alternative sanction.

6 **III. RECOMMENDATIONS**

7 For the foregoing reasons, the Court HEREBY RECOMMENDS that:

8 1. The district judge assigned to this case consider imposing monetary sanctions in
9 the amount of \$100 for every day that Plaintiff fails to respond to the Court's third OSC,
10 with such sanctions beginning on the date the district judge enters its order imposing such
11 sanctions;

12 2. Alternatively, that this action be dismissed, with prejudice, based on Plaintiff's
13 failure to comply with the Court's orders and failure to prosecute, and that the Clerk of
14 Court be directed to close this case.

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

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23 IT IS SO ORDERED.

24 Dated: March 16, 2020

25 */s/ Eric P. Gray*
26 UNITED STATES MAGISTRATE JUDGE
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