

1 (ECF No. 11.) The time for Plaintiff to respond to the order to show cause has passed
2 and no response was filed.

3 **II. LEGAL STANDARD**

4 Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with
5 these Rules or with any order of the Court may be grounds for imposition by the Court of
6 any and all sanctions . . . within the inherent power of the Court.” “District courts have
7 inherent power to control their dockets [and] . . . [i]n the exercise of that power, they may
8 impose sanctions including, where appropriate, default or dismissal.” Thompson v.
9 Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
10 prejudice, based on a party’s failure to prosecute, failure to obey a court order, or failure
11 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
12 (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-
13 63 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of a
14 complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure
15 to comply with local rule requiring pro se plaintiffs to keep court apprised of address);
16 Malone v. USPS, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply
17 with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424-25 (9th Cir. 1986)
18 (dismissal for lack of prosecution and failure to comply with local rules).

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

25 **III. ANALYSIS**

26 “The public’s interest in expeditious resolution of litigation always favors
27 dismissal.” Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (quoting Yourish v.

1 California Amplifier, 191 F.3d 983, 990 (9th Cir.1999)). Plaintiff's Complaint was
2 dismissed for failure to state a claim. (ECF No. 10.) Plaintiff has failed to comply with
3 the Court's Order that he file an amended pleading. He has not provided cause why his
4 action should not be dismissed. (ECF No. 11.) In such circumstances, the Court cannot
5 justify continuing to expend its scarce resources in this matter. Thus, both the first and
6 second factors weigh in favor of dismissal.

7 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently
8 prejudicial in and of itself to warrant dismissal." Pagtalunan, at 642 (citing Yourish, 191
9 F.3d at 991). However, "[u]nnecessary delay inherently increases the risk that witnesses'
10 memories will fade and evidence will become stale," Pagtalunan, at 643 (citation
11 omitted), and it is Plaintiff's failure to comply with Court orders and file an amended
12 pleading that is causing delay. Therefore, the third factor weighs in favor of dismissal.

13 As for the availability of lesser sanctions, at this stage in the proceedings there is
14 little available to the Court which would constitute a satisfactory lesser sanction while
15 protecting the Court from further unnecessary expenditure of its scarce resources.
16 Plaintiff has not paid the filing fee for this action and is likely unable to pay, making
17 monetary sanctions of little use, and given the early stage of these proceedings, the
18 preclusion of evidence or witnesses is not available.

19 Finally, because "[p]ublic policy favors disposition of cases on the merits," this
20 factor will always weigh against dismissal. Id.

21 Based on the foregoing factors, this action should be dismissed with prejudice
22 based on Plaintiff's failure to state a claim, failure to obey a court order, and failure to
23 prosecute.

24 **IV. CONCLUSION AND ORDER**

25 Based on the foregoing, it is HEREBY ORDERED that:

- 26 1. This action is DISMISSED WITH PREJUDICE based on Plaintiff's failure to
27 state a claim, failure to obey a court order, and failure to prosecute;

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2. This dismissal shall count as a strike pursuant to 28 U.S.C. § 1915(g).
Silva v. Vittorio, 658 F.3d 1090, 1098-1099 (9th Cir. 2011); and
3. Any and all pending motions shall be terminated and the Clerk of Court shall CLOSE this case.

IT IS SO ORDERED.

Dated: May 15, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE