

1 On October 30, 2017, the Court issued an order directing Plaintiff to show cause in
2 writing within twenty (20) days why this action should not be dismissed for failure to comply
3 with the Court’s September 19, 2017 order and failure to prosecute. (ECF No. 45.) The Court
4 expressly warned Plaintiff that the failure to comply with the order would result in the dismissal
5 of this action for failure to obey a court order and failure to prosecute. (Id. at 2.)

6 The deadline for Plaintiff’s response to the order to show cause has expired, and Plaintiff
7 has not complied with or otherwise responded to the Court’s orders.

8 **I. Discussion**

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

20 In determining whether to dismiss an action, the Court must consider several factors:
21 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
22 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
23 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779
24 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

25 Here, Plaintiff’s third amended complaint is overdue. Despite multiple attempts to
26 communicate with Plaintiff, he has been non-responsive to the Court’s orders. The Court cannot
27 effectively manage its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both
28 the first and second factors weigh in favor of dismissal.

1 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
2 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
3 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
4 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d
5 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
6 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
7 progress in that direction,” which is the case here. In re Phenylpropanolamine (PPA) Products
8 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

9 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
10 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;
11 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s September 19, 2017 order
12 expressly warned Plaintiff that his failure to file an amended complaint would result in dismissal
13 of this action for failure to obey a court order. (ECF No. 39 at 6.) Plaintiff also was warned of the
14 potential for dismissal by the Court’s October 30, 2017 order to show cause. (ECF No. 45 at 2.)
15 Thus, Plaintiff had adequate warning that dismissal could result from his noncompliance.

16 Additionally, at this stage in the proceedings there is little available to the Court that
17 would constitute a satisfactory lesser sanction while protecting the Court from further
18 unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this
19 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is
20 likely to have no effect given that Plaintiff has ceased litigating his case.

21 **II. Conclusion and Recommendation**

22 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
23 district judge to this action.

24 Further, the Court finds that dismissal is the appropriate sanction and HEREBY
25 RECOMMENDS that this action be dismissed, with prejudice, for failure to obey court orders
26 and failure to prosecute.

27 These Findings and Recommendation will be submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**

1 (14) days after being served with these Findings and Recommendation, the parties may file
2 written objections with the Court. The document should be captioned “Objections to Magistrate
3 Judge’s Findings and Recommendation.” The parties are advised that failure to file objections
4 within the specified time may result in the waiver of the “right to challenge the magistrate’s
5 factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing
6 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: December 8, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE