

1 time to file a response to the order to show cause has elapsed and the Plaintiff failed to respond to
2 file any response.

3 **II. Discussion**

4 Rule 110 of this Court's Local Rules provides that the "failure of counsel or of a party to
5 comply ... with any order of the Court may be grounds for imposition by the Court of any and all
6 sanctions ... within the inherent power of the Court." This Court has the inherent power to
7 manage its docket. *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). Further, a
8 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
9 failure to obey a court order, or failure to comply with local rules. *See, e.g., Pagtalunan v.*
10 *Galaza*, 291 F. 3d 639 (9th Cir. 2002) (dismissal upheld for failing to timely file objections to a
11 Report and Recommendation); *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal
12 for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
13 (dismissal for failure to comply with an order requiring amendment of complaint); *Henderson v.*
14 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to
15 comply with local rules). In determining whether to dismiss an action for lack of prosecution,
16 failure to obey a court order, or failure to comply with local rules, the court must consider several
17 factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
18 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
19 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
20 *Pagtalunan*, 291 F. 3d at 642; *Ghazali*, 46 F.3d at 53; *Ferdik*, 963 F.2d at 1260-61; *Thompson*,
21 782 F.2d at 831.

22 Here, the Court finds that the public's interest in expeditiously resolving this litigation and
23 the Court's interest in managing the docket weigh in favor of dismissal because there is no
24 indication that the Plaintiff intends to prosecute this action. Although he filed numerous
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1 documents in the beginning phases of this case, he failed to file the required pleading on two
2 different occasions as ordered. The Court cannot continue to expend its scarce resources assisting
3 a litigant who has not filed an operative pleading.

4 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because
5 a presumption of injury arises from any unreasonable delay in prosecuting an action. *Anderson v.*
6 *Air West*, 542 F.2d 522, 524 (9th Cir. 1976). Pendency of a lawsuit is not sufficiently prejudicial
7 in and of itself to warrant dismissal. *Pagtalunan*, 291 F. 3d at 642 (quoting at *Yourish v.*
8 *California Amplifier*, 191 F. 3d 983, 990 (9th Cir. 1999). However, “unnecessary delay
9 inherently increases the risk that witnesses’ memories will fade and evidence will become stale.”
10 *Pagtalunan*, 291 F. 3d at 642 citing *Sibron v. New York*, 392 U.S. 40 (1968). Here, the delay is
11 unnecessary and is caused by Plaintiff’s failure to file an amended complaint.

12 The fourth factor, public policy favoring disposition of cases on their merits, is greatly
13 outweighed by the factors in favor of dismissal. Finally, a court’s warning to a party that his or
14 her failure to obey the court’s order will result in dismissal satisfies the “consideration of less
15 drastic alternatives” requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 at 132-33; *Henderson*,
16 779 F.2d at 1424. In this case, the Court’s order requiring that Plaintiff file an amended
17 complaint or respond to the Order to Show Cause was clear that dismissal would result from non-
18 compliance with the Court’s order. (Doc. 22. Lines 26-28).

19 **III. Recommendation**

20 Based on the above, IT IS HEREBY RECOMMENDED that this action be DISMISSED
21 without prejudice for Plaintiff’s failure to comply with a court order and for his failure to
22 prosecute this action. It is further recommended that if these Findings and Recommendations are
23 adopted, the Clerk of the Court close this action.

24 These Findings and Recommendations are submitted to the district judge assigned to this
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1 action, pursuant to 28 U.S.C. § 636(b)(1)(B). No later than **July 22, 2016**, Plaintiff may file
2 written objections with the Court and serve a copy on all parties. Such a document should be
3 captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge
4 will review the magistrate judge's Findings and Recommendations pursuant to 28 U.S.C. §
5 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time may
6 waive the right to appeal the district judge's order. *Wilkerson v. Wheeler*, 772 F. 3d 834, 839 (9th
7 Cir. 2014); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

9 Finally, the Clerk of the Court is directed to serve these Findings and Recommendations
10 on Plaintiff at the address noted on the docket.

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13 IT IS SO ORDERED.

14 Dated: June 20, 2016

15 /s/ Eric P. Gray
16 UNITED STATES MAGISTRATE JUDGE
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