



1 Based on the ambiguity of the filing and Plaintiff's pro se status, the Court ordered  
2 Plaintiff, within twenty-one days, to clarify in writing whether he did not oppose the granting of  
3 the motion to dismiss or whether he intended to proceed with the litigation. (ECF No. 78.)  
4 Plaintiff was explicitly warned that his failure to respond to the Court's order would result in  
5 dismissal of this action for failure to obey a court order and failure to prosecute. (Id. at 2.)

6 After receiving no response from Plaintiff by the deadline, on November 5, 2018, the  
7 Court issued an order for Plaintiff to show cause why this action should not be dismissed, with  
8 prejudice, for failure to obey a Court order and failure to prosecute. (ECF No. 79.) Plaintiff was  
9 warned that if his response did not show good cause, this action would be dismissed with  
10 prejudice. (Id. at 2.)

11 The deadline for Plaintiff to respond to the Court's order to show cause has expired. The  
12 Court has received no further communication from Plaintiff, and none of the Court's orders have  
13 been returned as undeliverable.

## 14 **II. Failure to Prosecute and Failure to Obey a Court Order**

### 15 **A. Legal Standard**

16 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with  
17 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .  
18 within the inherent power of the Court.” District courts have the inherent power to control their  
19 dockets and “[i]n the exercise of that power they may impose sanctions including, where  
20 appropriate, . . . dismissal.” Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A  
21 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,  
22 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46  
23 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet,  
24 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring  
25 amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987)  
26 (dismissal for failure to comply with court order).

27 In determining whether to dismiss an action, the Court must consider several factors:  
28 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
2 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779  
3 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

4 **B. Discussion**

5 Here, Plaintiff’s clarification of his response to Defendants’ motion to dismiss is overdue,  
6 and he has failed to comply with the Court’s orders for him to file a response. The Court cannot  
7 effectively manage its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both  
8 the first and second factors weigh in favor of dismissal.

9 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a  
10 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
11 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against  
12 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d  
13 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose  
14 responsibility it is to move a case toward disposition on the merits but whose conduct impedes  
15 progress in that direction,” which is the case here. In re Phenylpropanolamine (PPA) Products  
16 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

17 Finally, the Court’s warning to a party that failure to obey the court’s order will result in  
18 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;  
19 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s October 3, 2018 order and  
20 November 5, 2018 order to show cause both expressly warned Plaintiff that his failure to file a  
21 response would result in dismissal of this action, with prejudice. (ECF Nos. 78, 79.) Thus,  
22 Plaintiff had adequate warning that dismissal could result from his noncompliance.

23 Additionally, at this stage in the proceedings there is little available to the Court that  
24 would constitute a satisfactory lesser sanction while protecting the Court from further  
25 unnecessary expenditure of its scarce resources and without risking further prejudice to  
26 Defendants. Plaintiff is proceeding *in forma pauperis* in this action, making monetary sanctions  
27 of little use, and the preclusion of evidence or witnesses is likely to have no effect given that  
28 Plaintiff has ceased litigating his case.

1 **III. Conclusion and Order**

2 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY  
3 ORDERS that:

- 4 1. This action is DISMISSED, with prejudice, due to Plaintiff's failure to obey Court  
5 orders and failure to prosecute this action; and  
6 2. The Clerk of the Court is directed to terminate all pending motions and to close this  
7 case.

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9 IT IS SO ORDERED.

10 Dated: December 6, 2018

/s/ Barbara A. McAuliffe  
11 UNITED STATES MAGISTRATE JUDGE

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