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5 **UNITED STATES DISTRICT COURT**

6 EASTERN DISTRICT OF CALIFORNIA  
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9 CALVIN M. SIMPSON, ) 1:15-cv-01464-BAM (PC)  
10 Plaintiff, )  
11 v. ) ORDER DISMISSING ACTION FOR  
12 FRESNO COUNTY JAIL, et al., ) FAILURE TO STATE A CLAIM, FAILURE  
13 Defendants. ) TO OBEY A COURT ORDER, AND  
14 ) FAILURE TO PROSECUTE  
15 ) (ECF Nos. 9, 10)  
16 ) ORDER THAT THIS DISMISSAL SHALL  
17 ) COUNT AS A STRIKE PURSUANT TO 28  
18 ) U.S.C. § 1915(g)  
19 )

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21 **I. Background**

22 Plaintiff Calvin M. Simpson (“Plaintiff”) is a state prisoner proceeding pro se and in  
23 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this  
24 action on September 28, 2015. Plaintiff consented to the jurisdiction of a Magistrate Judge.  
25 (ECF No. 5).

26 On August 16, 2016, the Court dismissed Plaintiff’s complaint with leave to amend  
27 within thirty days after service. Plaintiff was expressly warned that if he failed to file an  
28 amended complaint in compliance with the Court’s order, this action would be dismissed, with  
prejudice, for failure to obey a court order and failure to state a claim. (ECF No. 9).

Plaintiff failed to file an amended complaint and did not comply with or otherwise  
respond to the Court’s order. Accordingly, on October 7, 2016, the Court issued an order for

1 Plaintiff to show cause, within fourteen (14) days of service, why this action should not be  
2 dismissed based on Plaintiff's failure to comply with the Court's August 16, 2016 order, and for  
3 his failure to state a claim and failure to prosecute. (ECF No. 10).

4 Plaintiff's response to the order to show cause was due on or before October 24, 2016.  
5 However, as of the date of this order, Plaintiff has neither complied with the Court's previous  
6 orders, nor otherwise communicated with the Court.

## 7 **II. Discussion**

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

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

24 Here, the action has been pending for over a year, and Plaintiff's amended complaint is  
25 overdue. Despite multiple attempts to communicate with Plaintiff, he has been non-responsive  
26 to the Court's orders. The Court cannot effectively manage its docket if Plaintiff ceases litigating  
27 his case. Thus, both 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 West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs  
4 against dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*,  
5 291 F.3d 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 132-133; *Henderson*, 779 F.2d at 1424. The Court’s August 16, 2016 order  
12 expressly warned Plaintiff that his failure to comply with that order would result in dismissal of  
13 this action, with prejudice, for failure to state a claim and to obey a court order. (ECF No. 9, p.  
14 9). Plaintiff also was warned of the potential for dismissal by the Court’s October 7, 2016 order  
15 to show cause. (ECF No. 10). Thus, Plaintiff had adequate warning that dismissal could result  
16 from his noncompliance.

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

### 22 **III. Conclusion and Order**

23 Accordingly, it is HEREBY ORDERED that:

24 1. Pursuant to 28 U.S.C. § 1915A, this action is HEREBY DISMISSED, with  
25 prejudice, for failure to state a claim;

26 2. This action is also HEREBY DISMISSED for the failure to obey the Court’s  
27 August 16, 2016 order (ECF No. 9), and October 7, 2016 order (ECF No. 10) and for Plaintiff’s  
28 failure to prosecute this action;

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3. This dismissal SHALL count as a strike against Plaintiff under 28 U.S.C. § 1915(g); and

4. The Clerk of the Court is directed to CLOSE this action.

IT IS SO ORDERED.

Dated: October 31, 2016

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE